

SUPPLEMENTARY VOLUME V-B

DIGEST OF LAW CASES ON EDUCATION

Decided By

The Supreme Court of India & All High Courts

(1950—64)

VOLUME II

**Prepared for The Education Commission
By The Indian Law Institute, New Delhi**



EDUCATION COMMISSION

University Grants Commission Building

Bahadur Shah Zafar Marg

NEW DELHI—1966

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C_O_N_T_E_N_T

Cases	ix - xv
1. Admission to Educational Institutions University/Colleges or Schools	1 - 10
2. Constitutional Provisions & Educational Matters	11 - 85
3. Disputes between Managing Bodies and Board of Secondary Education and Government Education Deptt.	86 - 94
4. Examination Cases	95 - 123
5. Examinations - Debarring from	124 - 148
6. Examination Papers - Leakage of	149- 154
7. Industrial Dispute Acts and Their Application to Educational Institutions	155 - 157
8. Master and Servant Cases of Educational Institutions	158 - 185
9. Miscellaneous Supreme Court Cases on matters connected with Educational Institutions	186 - 189
10. Miscellaneous Cases concerning Educational Matters	190 - 201
11. Prescribing Text Books	202 - 205
12. Rustleation of students on Disciplinary grounds.	206 - 220
13. University Election Cases	221 - 247

INTRODUCTION

I have great pleasure in presenting this volume which analyses the cases relating to Education, decided by the Supreme Court of India and all the High Courts in the States and reported during the period from 1950 to 1964. The publication is being brought out in two volumes. The first contains a paper prepared by Dr. G.S. Sharma, Director, Indian Law Institute, New Delhi, which analyses the trends revealed in these cases; and the second gives a digest of the cases, arranged according to subjects.

I take this opportunity to convey the gratitude of the Education Commission to the National Council of Educational Research and Training, which provided the funds for this study, and to Shri L.S. Chandrakant, its Joint Director, who took a keen interest in the project. I would also like to place on record our gratitude to the Indian Law Institute and to Dr. G.S. Sharma, its Director, and his colleagues for undertaking this study at our request and for completing it so ably and in so short a time.

New Delhi,
1st January, 1966

J.P. Naik
Member-Secretary
Education Commission

1. ADMISSION TO EDUCATIONAL INSTITUTIONS -
UNIVERSITY/COLLEGES OR SCHOOLS (Pages 1-10)

...

Asha Lata v. Principal Meerut College AIR 1959 All.224	Remachendra v. State of M.P. AIR 1961 M.P.247
Ashok Kumar v. State of Orissa AIR 1963 Orissa 173	Ram Krishan v. Osmania University AIR 1962 A.P.120
Chitralekha v. State of Mysore AIR 1964 S.C.1823	Ramesh Chandra v. Principal, B.B.I. College, AIR 1953 All.90
Gangauna v. Andhra Medical College AIR 1958 A.P.470	Savir Kumar v. Someswar AIR 783 Cal. University of Madras
Gokul Prasad v. M.M. Somani AIR 1962 M.P.126	Shanta Bai AIR 1954 Madras 67
Hanwant Chand v. M.K. College, AIR 1956 Raj.158	Vijay Sen v. Registrar J&K University AIR 1958 J&K 45
M. Ramaswamy v. Menju Bakhru AIR 1963 Punj.419	Vikaruddin v. Osmania University AIR Hyderabad 25
P. Sandersan v. State of A.P. AIR 1958 A.P.569	
Prakash Chandra v. State of M.P. AIR 1962 M.P.48	
Raghurammulu v. State of A.P. AIR 1958 A.P.129	

2. CONSTITUTIONAL PROVISIONS & EDUCATIONAL MATTERS.

(Pages 11-85)

- Amrit Bazar Patrika
v.
Board of Higher Secondary
Intermediate Education UP
AIR 1955 All.595
- Anjali
v.
State of West Bengal
AIR 1952 Cal.822
- Anjali
v.
State of West Bengal
AIR 1952 Cal.825
- Arya Pritinidhi Sabha
v.
Bihar State
AIR 1958 Pat.359
- Bansidhar
v.
University of Rajasthan
AIR 1963 Raj.172
- Bombay Education Society
v.
State of Bombay
AIR 1954 Bom.468
- Chandrekant
v.
Secretary
Vidarbha Education Board
Nagpur
AIR 1958 Bom.433
- Chitra Rekha
v.
State of Mysore
AIR 1964 S. C.1823
- D. G. Viswanath
v.
State of Madras
AIR 1951 Madras 120
- Dipendra Nath
v.
State of Bihar
AIR 1962 Pat.101
- Dorairajan
v.
State of Madras
AIR 1951 Madras 120
- Gujarat University
v.
Shri Krishna
AIR 1962 S.C.703
- Jacob Methew
v.
State of Kerala
AIR 1964 Ker.391
- Joseph Callian
v.
State of Kerala
AIR 1962 Ker.33
- Joseph Thomas
v.
State of Kerala
AIR 1958 Ker.33
- Joshi D.P.
v.
M.B.State
AIR 1955 S. C.334
- K. Ganganna
v.
Principal Andhra M.C.
AIR 1958 A.P.470
- In re Kerala Education
Bill
AIR 1958 S. C.956
- Mohmed Hussain & Others
v.
State of Hyderabad
AIR 1953 Hyd.298
- Nageshwara Rao
v.
Principal Medical College
AIR 1962 A.p.212
- M. R. Balaji
v.
State of Mysore
AIR 1963 S. C.649

Om Parkash
v.
State of Punjab
AIR 1951 Punj.93

P. Sundarsan
v.
State of Andhra Pradesh
AIR 1958 A.P.569

Prakash Chandra
v.
State of M.P.
AIR 1962 M.P.48

Rama Krishna
v.
Osmania University
AIR 1962 A.P.120

Ramchandra Vishnu
v.
Madhya Pradesh
AIR 1961 M.P.247

Ram Krishan Singh
v.
State of Mysore
AIR 1960 Mysore 338

Ramnikanta
v.
University of Gauhati
AIR 1951 Assam 163

Rustom
v.
Madhya Bharat
AIR 1954 M.B.119

S.A. Partha
v. Ø
State of Mysore
AIR 1961 M.S., 220

Samir Kumar
v.
Someswar
AIR 1953 Cal.783

Sanjib Kumar
v.
Principal
St. Paul's College
AIR 1957 Cal.524

Sidhraj Bhai
v.
State of Gujrat
AIR 1963 S.C. 540

Shri Krishna
v. Ø
Gujarat University
AIR 1962 Guj.88

Surendra Kumar Jain & Others
v.
Central Board of Secondary
Education, Rajasthan

State of Bombay
v.
Bombay Education Society
AIR 1954 S.C.561

State of Kerala
v.
R. Jacob
AIR 1964 Ker.316

State of Madras
v.
Smt. Champakam Dorairanjan
AIR 1951 S.C.226

Subharaya
v.
Mysore State
AIR 1963 S.C.702

Sudhir Ch. Nag
v.
State of Assam
AIR 1958 Assam 25

In re Thomas
AIR 1953 Madras 21

University of Madras
v.
Shanta Bai
AIR 1954 Madras 67

V. Raghuramulu
v.
State of Andhra Pradesh
AIR 1958 A.P.129

Vikaruddin
v.
Osmania University
AIR 1954 Hyd.25

3. DISPUTE BETWEEN MANAGING BODIES, BOARDS OF
SECONDARY EDUCATION AND GOVERNMENT EDUCATION
DEPTT. (Pages 86-94)

Dwarka Nath
v. Bihar State
AIR 1959 S.C.249

Joseph Rev. FR.
v.
State
AIR 1958 Ker.20

Kerala Education Bill 1957
AIR 1958 S.C.956

Makhan Lal
v. S.K. Chatterjee
AIR 1955 Cal.72

Ram Sharan
v.
State of Bihar
AIR 1961 Pat.274

Sidhraj Bhai
v.
State of Gujarat
AIR 1963 S.C.540

4. EXAMINATION CASES (Pages 95-123)

...

Amitava v. Principal B.E. College AIR 1962 Cal.93	
Chittra Srivastava v. Bd. of H.S. & Int. Exams. AIR 1963 All.41	Kamla Banerjee v. Calcutta University AIR 1956 Cal.563
Damodar Mohanty v. Utkal University AIR 1955 Orissa 151	Laxmi Narayan v. C.B. Mahajan AIR 1955 All.534
Shri Ranjan 1955 9.	Gyan Dutt Sharma v. State of Ajmer AIR 1953 Ajmer 26
	Meena v. Madras University AIR 1958 Mad.494
Gynendra Vir Singh v. University of Allahabad AIR 1963 All.596	Prasun Kumar v. R.S. College Jharia AIR 1954 Patna 486
G.C. Mehrotra v. Allahabad University AIR 1964 All.254	Purshottam Das v. Board of Secondary Education AIR 1962 M.P.3
G.K. Ghose v. University of Calcutta AIR 1958 Cal.83	Registrar Madras University v. Sundara AIR 1956 Mad.309
G.P. Singh v. Faculty of Law AIR 1953 All.6	Rita Majumdar v. Rajasthan University AIR 1964 Raj.64
Himendra Chandra v. Gauhati University AIR 1954 Assam 65	Samarendra Prasad Chakravarty v. The University of Calcutta AIR 1953 Cal.172
Indra Bajaj (Km) v. Agra University AIR 1956 All.576	Shankar Rastogi v. Principal S.M. College AIR 1962 All.207
Jai Chand Rai v. State of Punjab AIR 1955 Him.Prad.9	Shudershan Lal v. Allahabad University AIR 1953 All.194

Shobha Bhatnagar
v.
The State
AIR 1959 M.P.367

Somesh Charan
v.
University of Calcutta
AIR 1957 Cal.656

Surendra Kumar
v.
Central Bd. of Sec. Edn.
AIR 1957 Raj.203

Tapendra Nath
v.
University of Calcutta
AIR 1954 Cal.141

Triloki Nath
v.
Allahabad University,
AIR 1953 All.244

University of Calcutta
v.
Somesh Charan
AIR 1958 Cal.31

5. EXAMINATIONS - DEBARRING FROM (Pages

....

- | | |
|--|---|
| Ajit Singh
v.
Ranchi University
AIR 1964 Pat.291 | Chanshyam Das
v.
Board of H.S. & Int. Exem.
AIR 1956 All.539 |
| Amolak Singh
v.
Punjab University
AIR 1957 Him.P.31 | Hakim Rai
v.
University of Punjab
AIR 1958 H.P.8 |
| Anmol Singh
v.
Osmania University
AIR 1963 A.P.83 | Jagannadha Rao
v.
Secretary S.E. Board
AIR 1961 A.P.6 |
| B.C. Das Gupta
v.
Bijoy Ranjan
AIR 1953 Cal.212 | Jagdish Chandra
v.
Punjab University
AIR 1952 Punj.935 |
| Bijoy Ranjan
v.
B.C.Das Gupta
AIR 1953 Cal.289 | L. Nagraj
v.
University of Mysore
AIR 1961 Mys.164 |
| Bd. of H.S. & Int. Edn.
v.
Ram Krishna
AIR 1959 All.226 | Loknath
v.
Utkal University
AIR 1952 Orissa 198 |
| Bd. of H.S. Ed. U.P.
v.
Chanshyam
AIR 1962 S.C.1110 | Mash-hood Ali
v.
Secy. Sec. Ed. A.P.
AIR 1962 A.P.187 |
| Calcutta Singh
v.
Registrar BHU
AIR 1960 All.531 | Maya
v.
Basirhal College
AIR 1957 Cal.428 |
| Calcutta Singh
v.
BHU
AIR 1960 All.642 | Mukund Madav
v.
Agra University
AIR 1961 All.301 |
| Dipa Pal
v.
University of Calcutta
AIR 1952 Cal.594 | N.D. Vizirani
v.
Maharaja Sayojirao Univ
AIR 1957 Bom.246 |
| E.V. Kumar
v.
University of Madras
AIR 1964 Mad.460 | Pyare Lal
v.
University of Saugor
AIR 1961 M.P.356 |

Ramchandra
v.
Punjab University
AIR 1963 Punj.480

Secy. Bd. of H.S. & Int.
Examination U.P.
v.
Virpal Singh
AIR 1960 All.535

Shiv Vikas
v.
Allahabad University
AIR 1960 All.196

Sonpal Gupta
v.
University of Allahabad
AIR 1958 All.792

Uma Shankar Singh
v.
State of Bihar
AIR 1959 Pat.224

Washin Ahmed
v.
Sec. Bd. of H.S. &
Int. Exam.
AIR 1961 All.290

6. EXAMINATION PAPERS - LEAKAGE OF (PAGES 149-54)

.....

H. Chandra
v.
Bihar University
AIR 1963 Pat. 295

S.K. Ghosh
v.
Vice-Chancellor Utkal Univ.
AIR 1952 Orissa.

Vice-Chancellor
v.
S.K. Ghosh
AIR 1954 S.C. 217

7. INDUSTRIAL DISPUTE ACT - ITS APPLICATION TO
EDUCATIONAL INSTITUTIONS (PAGES 155-57)

.....

B.S.E. Society
v.
W.B.C.E. Association
AIR 1964 Cal. 48

University of Delhi.
v.
Ram Nath
AIR 1963 S.C. 1873

8. MASTER AND SERVANT CASES OF EDUCATIONAL
INSTITUTIONS (Pages 158-185)

.....

Ajit Kumar Sarma
v.
State of Assam
AIR 1963 Assam 46

Akashaibar Lal
v.
V.C. Banaras Hindu Univ.
AIR 1961 S.C.619

Andhra University
v.
Durga Lakshmi Manoharan
AIR 1951 Madras 870

Arunima Das
v.
Secretary, S.E. Board
AIR 1957 Cal.182

Babu Lal
v.
Principal,
Govt. Engg. College
AIR 1960 M.P.294

Bhola Prasad
v.
U.A. Goswami
AIR 1963 Pat.437

Birhari Singh
v.
Inspector of Schools Manipur
AIR 1959 Manipur

Biswaranjan Bose & Ohters
v.
Hony. Secy. R.K. Mission
Vivakanand Soc. Jamshedpur
AIR 1958 Patna 653

Dasius
v.
The State
AIR 1957 T.C.214

E.P. Johan
v.
State
AIR 1957 TC 265

G.F. Papali
v.
University of Travancore
AIR 1957 T.C.46.

Ghulam H. Khan
v.
State of U.P.
AIR 1962 All.413

Govind Ram Sharma
v.
State of U.P.
AIR 1957 All.737

Hazi Mohammad Ibrahim
v.
Distt. School Board, Meld
AIR 1958 Cal.401

Joseph Mundassery
v.
St. Thomas College Trichur
AIR 1954 T.C.199

Kamlakar
v.
Principal Training College
AIR 1960 Bombay

K. Chandhers
v.
K.Datta Gupta
AIR 1957 S.C.722

M.K. Datta
v.
Ad hoc Committee
Panchya Bharathi Agarthala
AIR 1959 Tripura 27

Ram Dulari
v.
Inspectress of Schools
AIR 1961 All.64

Ramantar Sharma
v.
State of Bihar
AIR 1959 Pat.520

Rameswamy Ayyangar
v.
State of Madras
AIR 1962 Mad.367

Ramesh Chandra
v.
H.D.Jain College
AIR 1957 Pat. Arrah 145

Registrar,
University of J&K
v.
Khan Ghulam Mohammed
Illaqaband
AIR 1960 J&K 80

Sadasiva Iyer
v.
State of Kerala
AIR 1960 Ker.327

Sarangapani Naidu
v.
Kalyana Sundram High School
AIR 1957 Madras 561

Shivendra Bahadur
v.
Nalanda College
AIR 1962 S.C.1210

Suraj Prasad
v.
Manager ARHS
AIR 1961 Allahabad 282

S.Dutt (Dr.)
v.
Visitor of Delhi Univ.
AIR 1963 Punj.331

S.Dutt (Dr.)
v.
University of Delhi
AIR 1958 S.C.1050

Thiruvengadam
v.
Indian Institute of Science
AIR 1954 Mysore 158

9. MISCELLANEOUS SUPREME COURT CASES ON MATTERS
CONNECTED WITH EDUCATIONAL INSTITUTIONS
(Pages 186-189)

....

Akshaibar Lal
v.
Vice-Chancellor BHU
AIR 1961 S.C.619

J.K. Chaudhari
v.
R.K. Datta Gupta
AIR 1958 S.C.722

S. Dutt (Dr.)
v.
University of Delhi
AIR S.C.1050

Shivendra Bahadur
v.
Nalanda College
AIR 1962 S.C.1210

10. MISCELLANEOUS EDUCATIONAL CASES (Pages 190-201)

....

Ashalata
v.
Vikram University
AIR 1961 M.B. 299

Brij Mohan Sharma (Dr.)
v.
Chancellor Lucknow University
AIR 1961 All.331

Chinnamma
v.
Regional Dy. D.P.I.
AIR 1964 A.P.277

S.C. Barat
v. H.
H.V. Pataskar
AIR 1962 All.401

S.N. Shukla
v.
Chancellor Lucknow University
AIR 1961 All.401

Venkataswami
v.
University of Mysore
AIR 1964 Mysore 159

11. PRESCRIBING OF TEXTBOOKS (Pages 202-205)

Chaitanya Prakash

v.

Board of Secondary Education
AIR 1960 Raj.185

Gopal Chetty

v.

Director of Public Instruction
AIR 1955 Mys.81

Manjula

v.

DIRECTOR OF PUBLIC INSTRUCTION
AIR 1952 Orissa 345

12. RUSTICATION OF STUDENTS ON DISCIPLINARY
GROUNDS (Pages 206-220)

.....

Beni Madho Lal v. Bihar S.E.Board AIR 1954 Pat.405	Rana Pratap v. BHU AIR 1960 All.579
C.D. Sekkilar v. Krishna Moorthy AIR 1952 Mad.151	Rana Pratap v. BHU AIR 1956 All.256
Harbans Singh v. Punjab University AIR 1964 Punj.456	Ranvir Singh v. Distt. Inspector of Schools AIR 1954 All.636
Jang Bahadur v. Principal, Mohindra College AIR 1951 Pepsu 59	Sadhu Ram v. Principal Rajindra College, AIR 1951, Pepsu 151
Jang Bahadur v. Principal Mohindra College AIR 1951 Pepsu 61	Shibani Bose v. Krishna Moorthy AIR 1952 Cal.238
Jogindra Raj v. Allahabad University AIR 1956 All.503	Swapn Roy v. Khagendra Nath AIR 1962 Cal.520
Keshav Chandra v. Inspector of Schools AIR 1953	Trilochan Singh v. S.I.S. Institution AIR 1963 Mad.68.
Ram Chandra v. Allahabad University AIR 1956	
Ram Lal Gupta v. Principal Victoria College AIR 1955 M.B.33	
Rana Pratap v. BHU AIR 1960 All. 256	

13. UNIVERSITY ELECTION CASES (Pages 221-247)

...

- | | |
|---|--|
| Ajoy Kumar
v.
Saila Behari
AIR 1957 Orissa 159 | Rajendra Kumar
v.
State of M.P.
AIR 1957 M.P.60 |
| C. Pirchaiah
v.
Andhra University,
AIR 1961 A.P.465 | Ram Kumar
v.
Punjab University Solan
AIR 1954 Punj.253 |
| Darbara Singh
v.
Punjab University
AIR 1961 Punj.194 | Registrar University
v.
Ishwari Prasad
AIR 1956 All.60 |
| Hari Krishna
v.
Patna University
AIR 1952 Pat.463 | S.P. Singh
v.
Chancellor Bhagalpur Univ.
AIR 1964 Patna 162 |
| Ishwari Prasad
v.
Allahabad University
AIR 1955 All.131 | Satya Narayana
v.
T.S. Rao
AIR 1960 A.P.337 |
| J. Venkataswamy
v.
Correspondent K.G.Basic
Senior School
AIR 1961 A.P.178 | Surendra Mohan
v.
Gopal Chandra
AIR 1952 Orissa 359 |
| Kasturbhai Lalbhai
v.
Gujarat University
AIR 1960 Punj. 14. | |
| Nand Kishore
v.
B.N. Rai
AIR 1963 Patna 394 | |
| Phoolchand Sethi
v.
Nagpur University
AIR 1957 Bom.215 | |
| Pran Nath (Dr.)
v.
Lucknow University
AIR 1959 All.618 | |
| Pran Narain
v.
State of U.P.
AIR 1960 All.205 | |

ADMISSION TO EDUCATIONAL INSTITUTIONS -
UNIVERSITY/COLLEGE OR SCHOOL.

1. Citation of Case: Ramesh Chandra v. Principal B.B.I.
College. A .I.R. 1953 All. 90

The High Court/The S.C: A 11.

The Judge who delivered the
majority judgment: B.B. Prasad J.

Brief facts & arguments: The petitioner was allowed to complete one year of his Intermediate course as a student in the College but he was refused admission in the second year. There were some disciplinary reasons for the action taken by the college authorities, but they were not specifically brought to the notice of the petitioner.

Summary of decision: The Court held: There is no guarantee in the Constitution that if a student is studying in any institution then he has a right to continue his education in that particular institution, even though he may not be acceptable to the authorities of the institution.

Thus, the Principal of a college can, without communicating the reasons inform a student studying in the college that he cannot be admitted to the college during the next session where the Principal comes to the conclusion that such an action is necessary in the interests of discipline among the students. Such an action of the Principal is not hit by Art 29(2). As the High Court will not interfere under Art.226 with the action taken by the head of an educational institution

Remarks: The petition was dismissed.

2. Citation of Case: Savir Kumar v. Someshwar A.I.R.
783.

The High Court/The S.C: Cal.

The Judge who delivered the majority judgment: Sinha J.

Brief facts & arguments: Please refer to cases on the Constitution.

3. Citation of Case: Vikaruddin v. Osmania University
A.I.R. Hyd. 25

The High Court/The S.C: Hyd.

The Judge who delivered the majority judgment: Srinivasachari J.

Brief facts & arguments: Please refer to cases on the Constitution.

4. Citation of Case: University of Madras v. Shanta Bai
A.I.R. 1954 Mad. 67.

The High Court/The S.C: Mad.

The Judge who delivered the majority judgment: Rajamanar C.J. & V. Ayyar J.

Brief facts & arguments: Please refer to cases on the Constitution.

5. Citation of Case: Hanwant Chand v. K.K. College
A.I.R. 1956 Raj. 158

The High Court/The S.C: Raj.

The Judge who delivered the majority judgment: K. N. Wanchoo C.J.

Brief facts & arguments: The petitioner, (after passing his I.Com. Examination of the Central Board of Secondary Education Ajmer, as a private candidate), was denied by Rajputana University admission to the degree classes of an affiliated college, on ground that the University did not allow admission to private candidates except teachers and women candidates.

The petitioner's contention was that the rule making discrimination admissions in the University between private and regular candidates was but by Art.14 of the Constitution.

Summary of decision: The Court held: The University did not discriminate between persons passing the Intermediate Examination after attending a recognised institution and those passing it as private candidates. It was merely carrying out its educational policy and there is a reasonable basis for classification on an intelligible differentia which has a reasonable connection with the objective to be achieved, namely, sound higher education, It cannot therefore be said that by enforcing this resolution the University is denying equality before the law. Hence the resolution is not bit by Art.14.

Remarks: The application was dismissed. Art.14 referred.

6. Citation of Case: Raghurammulu v. State of A.P.
A.I.R. 1958 A.P. 129.

The High Court/The S.C: A.P.

The Judge who delivered the majority judgment: K. Subha Rao C.J.

Brief facts & arguments: Please refer to the cases on the Constitution.

7. Citation of Case: Gangauna v. Andhra Medical
College, A.I.R. 1958 A.P.470

The High Court/The S.C: A.P.

The Judge who delivered the majority judgment: K. Subha Rao C.J.

Brief facts & arguments: Please refer to the cases on the Constitution.

8. Citation of Case: P.Sudersan v. State of A.P.
A.I.R. 1958 A.P. 569

The High Court/The S.C: A.P.

The Judge who delivered the majority judgment: K. Subha Rao C.J.

Brief facts & arguments: Please refer to the cases on the Constitution.

9. Citation of Case: Vijay Sen v. Registrar of J&K University A.I.R.1953 J&K 45.

The High Court/The S.C: J&K

The Judge who delivered the majority judgment: Jai Lal Kishan J.

Brief facts & arguments: At issue was the interpretation of a University rule " if he has enrolled in a college affiliated to the University during 12 months preceding the examination",

The petitioner was a Senior Cambridge student admitted in an affiliated college on 3.7.57 to appear at Intermediate Exams of that session. But, his admission was cancelled under University Orders on 26.9.57 and he was debarred from appearing at the examination that year. The University's order was based on the interpretation that 'during 12 months preceding the examination' meant 12 months should have elapsed before the examination.

The contention on behalf of the petitioner was that all that the rule required was that he had to be on roll during 12 months preceding the Exam. which condition was fulfilled.

Summary of decision: The Court accepted the contention of the petitioners counsel, and held; the provision would mean that if the candidate had been enlisted in a college affiliated to the university during the 12 months preceding the examination, he is eligible for appearing in the examination. This would further mean that the enlistment or enrolment must have taken place at a point of time within 12 months preceding the examination.

Therefore, the cancellation of the admission of the petitioners and being debarred from appearing in the Intermediate Examination were both against University rules and ultra vires University powers.

Remarks: The petition was allowed.

10. Citation of Case: Asha Lata v. Principal, Meerut College, A.I.R. 1959 All. 224

The High Court/The S.C: All

The Judge who delivered the majority judgment: B.R. James J.

Brief facts & arguments: The petitioner had failed in M.Sc. (prev) class of Meerut College affiliated to Agra University and sought readmission which was denied as no vacancy was left.

She applied the Court for a writ of mandamus commanding the Principal to admit her into that class for the next session.

Summary of decision: The Court held that the petitioner had neither a legal right to be admitted to that class, nor there was a legal duty cast on the Principal to admit her, hence no writ could be issued.

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Further, admissions to educational institutions are domestic matters in which discretion of authorities concerned cannot be interfered.

Remarks: The application was dismissed.

11. Citation of Case: Ranchandra v. State of M.P. A.I.R.
1961 M.P. 247

The High Court/The S.C: M.P.

The Judge who delivered the majority judgment: K.L. Pandey J.

Brief facts & arguments: The petitioner had challenged the validity, under Art. 14 of the Constitution of few Rules provided under 'Medical Colleges in Madhya Pradesh Rules for Admission, 1960'. The Rules had provided for reservation of few seats for women candidates and for sons and daughters of bona fide political sufferers, and relaxation of rules where the Govt. under rights reserved with it, wanted to admit any ~~xxx~~ student to any medical college.

The petitioner had contended that as a result of these rules it could be possible for the Selection Committee not to allow him admission and to admit those who stood on merits lower to him.

Summary of decision: The Court observed: In the instant case, it is obvious and is also not disputed that 'Medical Colleges in Madhya Pradesh Rules for Admission, 1960' are merely executive or administrative instructions in a field which is not covered by any statute. If they had been statutory rules, we would not have hesitated to strike down such of those rules as offered against the provisions of Art.14 or quash any discriminatory action taken in pursuance, or even

in disregard of these Rules.

For the foregoing reasons, we are constrained to dismiss this petition which was argued with some warmth and verve perhaps justified on the facts. But we hope that the full discussions in open court of the matter of even-handed justice in admission to the Medical Colleges and of the departure of the Executive from the principles formulated by it has not been fruitless.

12. Citation of Case: Prakash Chandra v. State of M.P.
A.I.R. 1962 M.P. 48

The High Court/the S.C: M.P.

The Judge who delivered the majority judgment: H.R. Krishnan J.

Brief facts & arguments: Please refer to the cases on the Constitution.

13. Citation of Case: Rama Krishan v. Osmania University
A.I.R. 1962 A.P. 120

The High Court/The S.C: A.P.

The Judge who delivered the majority judgement: Chandra Reddy C.J.

Brief facts & arguments: Please refer to the cases on the Constitution.

14. Citation of Case: Gokul Prasad v. M.M. Somani
A.I.R. 1962 M.P. 126

The High Court/The S.C: M.P.

The Judge who delivered the majority judgment: P.V. Dixit C.J.

Brief facts & arguments: The petitioners were first admitted to the Basic Training Schools but soon their admissions were cancelled.

The petitioners contended that the cancellation order was wholly illegal and arbitrary.

Summary of decision.: The Court observed: As the instructions regulating the admissions into the Basic Training School, Betul are merely administrative or executive, their breach even in patent would not justify issue of a writ of certiorari for quashing the cancellation of admissions of students or for the issue of writ of mandamus for their readmission into the School.

It is no doubt/^{tnue}that admissions into public institution such as the Basic Training School are in the discretion of the authorities but the discretion is regulated by the Principles which the authorities have themselves laid down. If admissions are made and cancelled soon after for no apparent reason, the public may be pardoned for bewilderment over the kalidiscopic change.

Remarks: The petition was dismissed.

- 15. Citation of Case: Ashok Kumar v. State of Orissa
A.I.R. 1963 Orissa 173.

The High Court/The S.C: Orissa.

The Judge who delivered the majority judgment: R.L. Narasimhan C.J.

Brief facts & arguments: The petitioner was not selected by the Principal of the Burla Medical College for admission to M.B.B.S. Course. The Principal was authorised by the Selection Committee to make on the spot selection of the candidates for seats failling vacant due to non-appearing of few of the candidates selected by the Committee.

Two grounds were raised by the petitioner in his favour. 1. That he was placed, on basis of marks, higher than the other candidate (who was selected by the

Principal) in the list prepared by the Selection Committee.

2. The selection board had no jurisdiction to delegate their powers of making selection to the Principal.

Summary of decision: The Court held that: 1. As there was no prohibition by Government against the Selection Board further delegating their powers to the respective Principals to make spot-selection such delegation was not invalid.

2. No mala fide was attributed to the Principal and he had not exceeded the authority conferred on him by the Selection Board and the Principal had followed certain reasonable principles in making selections.

Therefore the High Court had no jurisdiction to exercise its powers under Art. 226.

Remarks: The application was dismissed.

16. Citation of Case: M. Ramaswamy v. Manju Bhakhru
A.I.R. 1963 Punj. 419

The High Court/The S.C.: Punj.

The Judge who delivered the majority judgment: Tek Chand J.

Brief facts & arguments: The petitioner respondent was not admitted to LL.B. Course in the faculty of Law of Delhi University. The appellants, because she had submitted an incomplete application. She had not enclosed with it a character certificate signed by a First Class (Stipendiary) Magistrate. Her character certificate was signed by the Joint Secretary, and Draftsman to the Govt. of India and countersigned by a First Class (Stipendiary) Magistrate.

Summary of decision: The Court held: The character certificate could not be said to be from a First Class (Stipendiary) Magistrate there was no compliance with the requirements qualifying a candidate for admission.

In this case the rules, which have contravened, have been expressly stated to be mandatory whether the rules are vital and mandatory or merely directory and dispensable is to be determined by the frames of the rules.

If the University authorities act according to the rules it was not for the High Court to reframe their rules or to ask them not to follow those rules, or which construing those rules, to make them flexible when they were intended to be strict. It will be extremely inconsistent for the High Court to interfere

Remarks: The appeal was allowed.

17. Citation of case: Chitralokha v. State of Mysore
A.I.R. 1964 S.C. 1823

The High Court/The S.C: S.C.

The Judge who delivered the majority judgment: K.Subha Rao J.(B.P.Sinha C.J.,
Raghuber Dayal,N.Rajagopala Ayyangar
JJ.)
J.R. Mudholkar J. contra.

Brief facts & arguments: Please refer to the cases on the Constitution.

Constitutional Provisions and Educational matters

1. Citation of Case: Dorairajan v. State of Madras, A.I.R, 1951
Mad. 120

The High Court/ The S.C.: Mad (F.B.)

The Judge who delivered the majority judgment: Rajamanar C.J. Viswanath
Sastri & Somasundram J.J.
(Somasundaram J. dissented)

Brief facts and arguments: The Constitutionality of a communal G.O. was challenged by the petitioners. By the G.O. admissions in certain Government Colleges were restricted on the basis of caste, sex etc. irrespective of the merits of the students.

It was contended that the order violated fundamental rights under Arts 15(1) and 29(2) of the Constitution.

During the course of arguments the Advocate General on behalf of the State admitted that the G.O. did make the discrimination but contended that the discrimination was due to public policy and for social justice to promote interests of educationally backward sections of the citizens. He relied on Art. 46 of the Constitution.

Another Contention on behalf of the State was that word 'only' which occurs in Art. 29(2) means that admission would be denied not 'only' on any of the grounds mentioned in the Article but also on other grounds, namely, paucity of seats and necessity to make due provision for weaker sections of the citizens.

Summary of the Decision: The Court held that the Communal G.O. which made discrimination amongst applicants for admission to certain Government Colleges on the basis of caste

was ultra vires of the Constitution under Ar.15(1) & Art.29(2). The Court observed that the Articles prohibited to 'discriminate against', that is to treat unfavourably, any citizen of a particular religion or caste when compared with persons of other religion or caste merely on the ground that they belong to a particular ¹¹ region or caste. Thus, if the Government wanted to provide for the uplift of the backward and weaker sections of people which inter alia is embodied in Art. 46, the State should have done something without contravening the provisions of the Articles guaranteeing fundamental rights of the citizens.

Art. 46 cannot override the provision of the Articles 15(1) and 29(2).

Rajamannar C.J. observed that the meaning of Art. 15(1) would remain wholly unaffected if the word 'only' were omitted.

Sastri J. Held that the significance of the word 'only' is that, other qualifications being equal, the race, religion or caste of a citizen should not be a ground of preference or disability.

Somasundaram J. held a contrary view. He observed that 'only' meant 'solely' or 'for this reason above'. That is the discrimination or denial should not be on the ground of religion race, caste or language alone. In other words, discrimination or denial may be on the basis of religion, race, caste, language, but should not be the sole ground.

He also held the view that Art. 45(1) and Art. 29(2) were subject to principle contained in Art.46.

Remarks: Arts 15(1), 29(2) and 46 referred.

2. Citation of Case: State of Madras v. Sm. Champakam Dorairanjan.
A.I.R. 1951 S.C. 226

The High Court/ Supreme Court
The S.C.

The Judge who delivered the majority judgment: S.R. Das J. (Kania C.J.
Fazal Ali, Patanjali Sastri,
Mahajan, B.K. Mukherjee &
Bose JJ.

Brief facts and arguments:

Summary of the decision: The Court held that the classification made by the Communal G.O., on the basis of religion, race and caste was opposed to the Constitution and constituted a clear violation of the fundamental rights guaranteed to the citizen under Art. 29(2).

The directive principles of State policy cannot override the provisions found in Part III of the Constitution, they have to conform to and run as subsidiary to the Chapter of Fundamental Rights. The fundamental rights are sacrosanct and not liable to be abridged by any legislative or executive act or order except to the extent provided in the appropriate Art. in Part. III.

Remarks: Appeal dismissed. (As a result of these decisions an amendment of the constitution was made and Art. 15(4) was inserted to enable States to make special provisions for reservations for socially and educationally backward and scheduled caste people).

3. Citation of Case: Om Prakash v. State of Punjab, A.I.R. 1951
Punj. 93

The High Court/The S.C.: Punjab

The Judge who delivered the majority judgment: Kapur J.

Brief facts and arguments: Under the order of the Punjab Government, admissions to the State Engineering College were to be made by a Selection Board. The applicants were divided into categories of general pool and for reserved seats. The latter were in favour of Govt. nominees, Harijans, ex-servicemen and their wards.

The order was challenged by the petitioner as unconstitutional and violating Arts 15(1), 29(2) and 16. It was also contended that the Selection Board's activity was an 'eye wash' for the Government's unconstitutional nomination and reservation based on caste consideration.

Summary of decision: The Court held that the Order was not unconstitutional as the nominations and reservations were not based only on caste. Admissions were made on the recommendation of the Selection Board and for admission there were other considerations also, not merely caste. Art. 29(2) was not infringed.

The Court accepted the view of the dissenting Judge in Dorairajan v. State (supra) that the purpose of Art. 46 would be frustrated if it is subjected to Arts 15(1) and 29(2). In other words, the State could make reservations for members of Scheduled Tribe and Scheduled Caste.

Art. 15(1) would apply only when a person is kept out or is admitted into any college on the ground solely of religion, race or sex or any of them. And, no such

ground of exclusion has been made out in the present case.

Remarks: Application dismissed. Arts 15(1) and 29(2).

4. Citation of Case: In re Thomas A.I.R. 1953 Mad. 21.

The High Court/The S.C.: Madras

The Judge who delivered the majority judgment: Rajamannar C.J.

Brief facts and arguments: Rule 92 of Madras Education Rules was challenged by the petitioner, to be in violation of Arts 14 & 15(1) of the Indian Constitution. In matter of concession in school fees, the Rule had made exception that concession would be given to pupils or students who themselves had been converted to Christianity or guardian had been converted and no concession where conversion had been more than one generation old.

The contention was that the Rule made discrimination between persons on the ground of religion.

Summary of decisions: The Court held that -

- (1) the State was granting an indulgence and it was for the State entirely to decide how far the indulgence would go. By restricting concession to the converted students or those whose parents or guardians were converted but not to those whose conversions were more than one generation old. There was no discrimination.
- (2) Moreover, there was no right to a concession and the petitioner could not claim a deprivation of right.

Remarks: Petition dismissed. Arts. 14 and 15(1).

5. Citation of Case: Bombay Education Society v. State of
Bombay A.I.R. 1954. Bomb. 468.

The High Court/The S.C.: Bombay

The Judge who delivered the majority judgment: Chagla C.J.

Brief facts and arguments: By an order, Bombay Government directed that the primary or secondary schools where medium of instruction was English should admit to a class only those students who belong to a section of citizens the language of which is English, namely, Anglo-Indians and citizens of non-Asiatic descent."

Petitions were filed to challenge the constitutionality of the order on the grounds that it deprived the citizens of their rights guaranteed under Arts 29(2), 29(1), 30(1) & 337.

One of the petitioners was a school affected by the order and the other two were guardians who could not get their wards admitted into the schools of their choice because it was pointed out that they did not belong to the section of citizens whose language was English.

Summary of the decision: The Court held -

(1) that although the grounds on which the State based the circular might not be grounds of religion, race or caste, still the effect of the circular was to deprive the citizens of their right only on the grounds mentioned in Art. 29(2).

(2) that in face of the proviso to Art. 337 the State was asking the Anglo-Indian school not only not to make available 40 per cent of the annual admissions which are
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unserved for non-Anglo-Indian from entering the school.

(3) that, therefore, the order was bad on the ground that it contravened Arts 29(2) & 337.

(4) Art. 29(2) embodies two important principles (a) the right of the citizen to select any educational institution maintained or aided by the State; (b) an educational institution which the State recognizes cannot restrict admission to members of particular religion, race, caste or language. Therefore, the only two conditions that are necessary for the operation of Art. 29(2) are that there must be an institution maintained by the State and it must receive aid out of the State funds. Therefore, as soon as there is such an educational institution, the right of the citizen to admission to this school arises and that right cannot be defeated only on the ground that he belongs to a particular religion, race, caste or speaks a particular language.

(5) Under Art. 30(1) a minority is not only given the right to establish and administer educational institution, but the educational institutions must be of their own choice so as conserve the rights given to it under Art. 29(1). It is not open to the State to dictate to a minority what the nature of its educational institution should be.

Remarks: Arts 29(2) and 337.

6. Citation of Case: State of Bombay v. Bombay Education Society. A.I.R. 1954. S.C.561.

The High Court/The S.C. S.C.

The Judge who delivered the majority judgment: S.R. Das J. (Mahajan C.J. Ghulam Hassan, Bhagwati & Jagannadhas JJ).

Brief facts and arguments: Facts, as narrated in the above case. The Court made observations on another clause of the same order to which also its attention was drawn. This clause had advised the schools having medium of instruction as English to open progressively divisions of standards using Hindi or an Indian language as the medium of instruction, starting from standard I in 1954.

Summary of decision: The Court held that -

(1) the order by denying to all pupils, whose mother tongue was not English, admission into any school where the medium of instruction was English, offended against the fundamental right guaranteed to all citizens by Art. 29(2).

(2) the language of Art. 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority group.

(3) Art. 15 protects all citizens against the State in general i.e. against any discriminating action taken by the State, whereas Art. 29(2) extends against the State or anybody who denies the right (of admission into educational institutions of a specified type) conferred by it. Art. 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State.

To limit this right only to citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. There is no cogent reason for such discrimination.

(4) Where a minority, like the Anglo-Indian Community, which is based, inter alia, on religion and language, script and culture ^{under} Art. 29(2) and has the right to establish and administer educational institutions of their choice under 30(1), surely then there must be implicit in such fundamental right, the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise would be to deprive Art. 29(1) and Art. 30(1) of the greater parts of their contents. Such being the fundamental right, the police power of the State to determine the medium of instruction must yield to this fundamental right to the extent it is necessary to give effect to it and cannot be permitted to run counter to it.

Remarks: Appeal was dismissed. Arts 15 and 29(2), 30(1).

7. Citation of Case: Rustom v. Madhya Bharat. A.I.R. 1954
M.B. 119.

The High Court/The S.C.: Madhya Bharat.

The Judge who delivered the majority judgment: Nevasker J.

Brief facts and arguments: Imposition of capitation fees on non-Madhya Bharat students was challenged by the petitioners who were studying in Medical College Indore.

They contended that imposition of capitation fees was unconstitutional and violated their rights guaranteed under Arts 15(1) and 29(2). It was a discrimination made by the State on the ground of 'place of birth'...

And, that the classification made between the students belonging to the State and outsider violated the spirit of Art. 14 also.

Among the petitioners there was one female petitioner who was, though a M.B. resident, was considered a non-resident because she was admitted as a candidate recommended by the Rajasthan State and capitation fee was imposed on her too.

Summary of decision: The Court held that -

(1) imposition of capitation fee was not unconstitutional as it was based not on ground of place of birth but on ground of residence.

The discrimination prohibited by Arts 15(1) and 29(2) is on ground of place of birth. When State can limit admissions in an educational institution of the State to the residents of the State itself, the imposition of capitation fees will also be not obnoxious.

(3) Nor will this classification violate the letter and the spirit of Art. 14 as the classification is based on reasonable grounds relevant to the object of legislation and cannot be styled as arbitrary or capricious having no relation to the object sought to be achieved.

(4) If a person is entitled to a certain advantage as belonging to a certain group then any unjustifiable attempt to vary the scope of that Rule as to exclude that person comes equally within the purview of equal protection clause of Art. 14.

Thus, the female petitioner who was entitled to exemption from capitation fee as she was resident of M.B., could not be treated differently only because she was a nominee of Rajasthan State.

Remarks: The petitions of two petitioners were dismissed while the petition of the female was allowed. Arts. 14,

Citation of Case: Joshi, D.P.v. M.B. State. A.I.R.1955

S.C. 334

The High Court/The S.C.: Supreme Court.

The Judge who delivered the majority judgment: Venkataramma Ayyar J.
(B.K. Mukherjea C.J., Bose
Jagannadhadas & Sinha JJ)
Jagannadhadas differed.

Brief facts and arguments: Imposition of capitation fee was challenged on same grounds as in the above case.

Summary of the decision: The Court held that -

(1) Residence and place of birth are two distinct conceptions with different connotations both in law and in fact, and when Art. 15(1) prohibits discrimination based on place of birth, it cannot be read as prohibiting discrimination based on residence. Domicile of a person means his permanent home. Whether the expression used is "domicile of origin" or "domicile of birth" the concept involved in it is something different from what the words "place of birth" signify. And if "domicile of birth" and "place of birth" cannot be taken as synonymous, then the prohibition enacted in Art. 15(1) against discrimination based on place of birth cannot apply to a discrimination based on domicile.

(2) Citizenship and domicile represent two different conceptions. Citizenship has reference to political status of a person and domicile to his civil rights. Domicile has reference to system of law by which a person is governed. There could be different domiciles for different States. It cannot be contended that there cannot be a domicile of Madhya Bharat under the

Constitution. When the rule making authorities referred to domicile in the rule they were thinking really of residence. In this view also the contention that the rule is repugnant to Art. 15(1) must fail.

(3) The classification was held valid under Art. 14 also. The Court agreed that the State when it was spending considerable finance to maintain a Medical College, it was justified in granting concessions to the residents of the State obviously calculated to serve the object that presumably some of them might, after passing out of the College, settle down as doctors and serve the need of the locality. Thus, the classification is based on a ground which has a reasonable relation to the subject matter of the legislation. Such a classification would be eminently just and education which is the concern primarily of the State.

Remarks: The petition was dismissed. Reference to Arts 14 and 15(1)

9. Citation of Case: University of Madras
vs. Shanta Bai. A.I.R.
1954 Mad. 67

The High Court/The S.C. Madras

The Judge who delivered:
the majority judgment Rajamannar C.J. &
V. Ayyar J.

Brief facts and arguments:

With a view to provide educational facilities to increasing number of women candidates in the State the University allowed colleges for male students to admit women candidates. But this increased co-education and its allied troubles to the extent that the University had to lay down conditions which the male colleges were required to fulfil before they could admit female candidates whose number was prescribed and duly permitted by the University.

These conditions and rules restraining admission of girl candidates were challenged by the petitioners as anti-constitutional and discriminatory and based on sex and prohibited under Art. 15(1)

It was also contended that Art. 29(2) which do not prohibit discrimination on the basis of sex for admission into educational institutions, should be held subject to Art. 15(1).

The judgment on the petition was delivered by Subba Rao J who held that Art. 29 did not exclude the application of Art. 15(1), hence the directions given by the University were opposed to that Art. as discriminatory to petitioners on ground of sex and accordingly void. The Court had held that though mandamus could not be

issued to the principal of the college it could be issued to the University to direct it to consider the petitioner's application without discriminating on the ground of sex. Against the decision the University had preferred this appeal.

It was contended on behalf of the University by the appellant (1) Art. 15(1) prohibits discrimination only by the State; the University of Madras is not a State and its directions are therefore unaffected by the operation of Art. 15(1). (2) The right of a citizen to get admission into an educational institution is governed not by Art. 15(1), but art. 29 which does not prohibit any restriction based on the ground of sex. (3) The directions given by the University do not deny the right of women to be admitted into colleges, but only regulates the exercise of that right and that having regard to the nature of the right, the restrictions are reasonable and not discriminatory.

Summary of decision:

The Court held that:

- 1) The University, not exercising governmental function as understood under Art. 12 of the Constitution of India, was a juristic person created by a Madras Act 7 of 1923. It cannot be regarded as an instrumentality of the Government. It is a State-aided institution, but it is not maintained by the State and does not come within the scope of Art. 12.
- 2) Being only State-aided and not State-maintained, the

university did not come within the prohibition enacted in Art 15(1).

3) Institutions exclusively for women can be established under Art.15(3) without violating Art.15(1). It is also not inconsistent for institutions not falling under Art 15(3) to exclude or admit women students. The combined effect of Art 15(3) and 29(2) is that while men students have no right of admission to women's colleges, the right of women to admission in other colleges is a matter within the regulation of the authorities of these colleges. Art 29(2) is a special Article and is the controlling provision when the question relates to the admission to colleges.

Remarks:

The appeal was allowed. Arts. 12,15(1) and 29(2) referred to.

10. Citation of Case: V.Raghuramulu vs. State of Andhra Pradesh
A.I.R. 1958 A.P.129

The High Court/The S.C. Andhra Pradesh

The Judge who delivered the majority judgment Subba Rao C.J.

Brief facts and arguments:

The G.O. making a reservation of maximum 15% of the total number of seats available in any faculty for candidates belonging to backward classes, was challenged as violative of Art. 29(2) of the Constitution.

It was contended by the petitioners that the reservation of a maximum 15% of total number of seats, had

deprived them (the members of the backward classes) of their fundamental right-under Art. 29(2)- as a citizen may belong to a backward class or not.

Summary of decision:

The Court observed:

Every individual citizen whether he belongs to the backward classes or not has a right to get admission into an educational institution of the kind mentioned in Cl.2 of Art. 29. The said fundamental right is abridged by the special provision made by the State for the advancement of any socially and educationally backward classes of citizens. If the provision is for the advancement of such classes the fundamental right of a citizen is not infringed for his right itself is reduced by the provision. But if the provision though it purports to be for the advancement of the backward classes, in effect abridges their rights, the entire provision or that part of it which abridges their rights would be bad leaving untouched the fundamental right of every citizen whether he is a member of the backward classes or not.

The said rule is obviously made on the assumption that under no contingency more than 15% of the total number of seats in any faculty would be or could be captured by the members of the backward classes in open competition. Where such assumption has been belied in a particular area, the effect of the provision instead of advancing the cause of the backward classes prevents some members of those classes, from getting seats which they would have otherwise got if all the seats were brought under a common pool.

The Court held that it may be that in other localities where the members of other communities are more advanced educationally than in the area in question, this rule may work for the advancement of the backward classes candidates. It was therefore not necessary to hold that the rule was bad but it would be enough to confine the operation of that rule to a case where the assumption underlying that rule applied and to hold that in other cases where the rule does not operate for the advancement of the backward classes the fundamental right of a citizen of that class was unaffected by the provision.

Remarks:

Respondents ordered to reconsider the application of the petitioners and if they have preferential claims over others who have already been selected they may be provided for creating two additional seats. Art. 29(2).

11. Citation of Case:

F. Sundarasan Vs State of
Andhra Pradesh. A.I.R. 1958
A.P. 569-

The High Court/The S.C.

Andhra Pradesh

The Judge who delivered
the majority judgment

K. Subba Rao C.J.,

Brief facts and arguments:

The petitioner had failed to secure admission in a medical college of the State either in seats reserved for backward classes or in the general pool. He challenged the selections made by the college.

As result of the decision in the earlier case (No.10 supra) the G.O. was changed and the number of seats reserved for members of backward classes was made 'minimum' 15% of the total number of seats instead of the 'maximum' 15% as was previously required..

It was contended on behalf of the petitioner that the seats should be divided into two compartments, reserved quota and the general pool. The members of backward classes should first be allowed to compete for seats from the general pool and those selected should be excluded from the reserved quota which should be filled by the remaining candidates of the backward classes.

Summary of decision:

The Court observed that:

"if the selection is made in two different compartments in such a way that some boys belonging to the backward classes are allowed to compete for the general pool and some for the reserved seats, it would cause great hardship to the boys belonging to the other communities. The rule, therefore, can be worked out in a such way as to protect the interests of students of the backward classes without at the same time causing prejudice to students of other communities.

This could be achieved by pooling all the candidates together and guaranteeing minimum seats for those belonging to the backward classes.

The Court held "this court in the earlier judgment does not compel selection in different compartments but only

reserves some seats to the particular communities. In this view, as the petitioner did not succeed in the general competition, and as the seats reserved to the backward classes for their protection were exhausted, no right of the petitioner was infringed.

Remarks: Application was dismissed. Art 29(2) referred to

12. Citation of Case:

K.Ganganna V.
Principal Andhra M.C.
A.I.R. 1958 A.P. 470

The High Court/The S.C. Andhra Pradesh

The Judge who delivered
the majority judgment K. Subba Rao C.J.

Brief facts and arguments:

The petitioner's admission in the medical college was being delayed because his nativity certificate was subjected to enquiry by the Government.

According to the G.O.Ms it was the duty of the Principal to check the nativity certificate for its correctness. The duty was not of the Selection Committee or the Government. The nativity certificate given by the prescribed officer is prima facie accepted as correct and selection is proceeded with on that basis.

The petitioner had prayed the Court for a Writ of mandamus directing the respondents to act in accordance with the G.O.Ms and to admit him in the Medical College.

It was contended on behalf of the respondents that G.O.Ms being only administrative directions, non-compliance with the rules does not confer on the candidate any right to compel the authorities to proceed in strict conformity with the rules.

(On the correctness of the nativity certificate neither the Government nor the Selection Committee had come to any conclusion and the publication of the name of the petitioner as one of the selected candidate was withheld.

Summary of decision:

The Court held that the contention that G.O.Ms being only administrative directions, authorities cannot be compelled to proceed in strict conformity with the rules "is a double-edged weapon and it cuts both ways. If the rules can be ignored, the entire selection of candidates would be bad; for, every candidate then will have right to take his chance in the common pools. The Government, therefore, cannot rely upon the scheme embodied in the rules to sustain the selections and to ignore it to defeat the claims of the student."

The Committee did not discharge the duties enjoined on them under the G.O. No.1022.... and the mandamus could be issued."

Remarks: Petition was allowed.

13. Citation of Case: Sudhir Ch.Nag. State of Assam A.I.R. 1958 Assam 25

The High Court/The S.C. Assam

The Judge who delivered the majority judgment G. Mehrotra J.

Brief facts and arguments:

The ward of the petitioner was denied Middle School Scholarship on ground that he was not a 'permanent resident of Assam' as was required under the Scholarship rules.

The interpretation and the scope of the words "permanent resident' as applied by the authorities, were challenged by the petitioner.

The petitioner also challenged the constitutionality under Art. 15 of the interpretation given by the authorities to the words "permanent resident" - meaning thereby person born in the State.

Summary of decision:

The Court, after considering the definition of the words ' permanent residents' in para 33 of Ch.II of Assam Education Department Rules, the use of the words "domiciled there in" occurring in para 33 and the requirements of S.307(2) of the Assam Executive Manual, held: that the person other than those who fulfil the requirements of S.307(2), if otherwise they are domicile of Assam, cannot be excluded from the definition of the words "permanent residents".

Such persons come within the ambit and scope of rules 51 and 52 of the Scholarship Rules.

The Court further held that in para 33 the word "permanent resident" has not been defined only as to include domicile, but it has further said it will include a native of Assam...Thus the use of the word 'native' does indicate that the framers of the rule had in mind the place of birth, and Paras 51 and 52 when read as a whole with the definition in para 33 may be said to discriminate on the ground of the place of birth (violating Art. 15 of the Constitution).

The Court issued orders to the opposit parties not to give effect to the order-denying the right to Scholarship - and to consider the claim of the petitioner's brother according to the rules.

Remarks:

Petition was allowed. Art 15(1)

14. Citation of Case: Joseph Thomas v
State of Kerala
A.I.R. 1958
Ker. 33

The High Court/The S.C. Kerala
The Judge who delivered M.S. Menon J.
the majority judgment

Brief facts and arguments:

The petitioner had challenged the Constitutionality of the Government direction to divide seats in Medical and Engineering Colleges of the State in the proportion of 5:8 between two parts of the State, viz., Malabar and Travancore-Cochin.

Summary of decision:

The Court held that:

The distribution of seats in colleges between two parts of the State is not on the basis of the place of birth of the candidates but of their domicile, that is, their place of residence. Residence and place of birth are two distinct conceptions with different connotations both in law and in fact, and when Art.15(1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence.

It is Art. 29(2) and not Art 15(1), which prevails in matters of admission into educational institutions. While Art. 15(1) prohibits discrimination on the ground 'inter alia' of 'place of birth' these words are omitted in Art.29(2).

The omission is deliberate and there is a purpose behind it. A State might be minded to open an institution for the advancement of knowledge in a particular region which might be backward and for carrying out this subject it might restrict admission into the institution to persons of the locality. If persons from other and more advanced region are to insist on being admitted and the restriction in favour of the persons who belong to the locality is to be rejected as inconsistent with Art. 15(1), the result would be that persons in the locality might be prevented for all times from improving their lot.

The Government directive was held not violating any provision in the Constitution.

Remarks:

Petition was dismissed. Arts. 15(1) and 29(2)

15. Citation of Case:

Ramakrishna Singh v.
State of Mysore A.I.R.1960
Mysore 338.

The High Court/The S.C.

Mysore

The Judge who delivered
the majority judgment

S.R. Das Gupta
C.J.

Brief facts and arguments:

Orders of the Government making reservations of seats in Technical and Professional Collèges and Institutions for candidates of socially and educationally backward classes were challenged as unconstitutional. The classification made by these orders included almost entire population of the State in the categories of socially and educationally backward classes excluding only a few of the communities e.g. Brahmins, Kayasthas, Banias, Anglo-Indians and Parsees.

Contentions on behalf of petitioners:

1) Expression "State" used in Art 15(4) means legislature and not the Government i.e. Executive, hence the Government could not issue orders.

2) Under Art. 15(4) provision can be made for backward classes but not for backward castes. The only caste which are exempted from the prohibition are Scheduled Castes.

3) State legislature or Government cannot determine who are socially and educationally backward classes. This can be done only by the President Under Art. 340.

4) The order making reservation on the basis of communities and castes for the benefit of 95% of the population, excluding only 5% therefore is a fraud on the Constitution.

5) The order determining the backward classes is not based on any principle and is wholly arbitrary and should be struck down.

Summary of decision:

The Court held that:

1) Expression "State" includes executive government of the State.

2) "Backward Classes" can be determined on the basis of castes, and they need not always be determined on territorial, economical, occupational or some such basis. The basis on which classification of backward classes may be made would vary from State to State.

3) It has not been mentioned in Art 300 or in any other article of the Constitution that for purposes of this Constitution the socially and educationally backward classes would mean the classes who have been specified by the President under Art. 340. In any event, when the President has not made any such specification, the State would be competent in acting under Art. 15(4) to do so.

4) A legislative or executive action would amount to fraud on the Constitution if the Legislature or Executive purporting to act in compliance with the Constitution has in effect acted, even though innocently, in non-compliance with the terms thereof.

The object of the Article was not to enable the State to make a discrimination against a small section of population or to permit a provision being made for comparatively backward classes, i.e. classes who, compared to the most forward classes were backward. Such an order would, therefore, amount to non-compliance with the terms of and a fraud on the constitution.

The so called provision for socially and educationally backward classes did not in fact benefit such classes as it debarred the boys of the different groups from getting any seats above the number of seats allotted to the "backward classes", and on this ground also the notification could not be justified under Art 15(4).

5) The Court can consider whether the classification by the Government is arbitrary or is based on any intelligible and tenable principle.

The determination of backward classes made in 1959 on the basis of the Census report of 1941 cannot be said to be based on any intelligible principle. Considerable changes have taken place between 1941 and 1959..

Literacy can be the only test of educationally backward classes. There is no reason why English literacy alone should be considered as a test of educational backwardness. Educational backwardness does not necessarily mean 'social' backwardness, Clause (4) requires for its applicability both social and educational backwardness.

The Government notification was arbitrary and not based on any intelligible principle, and should be struck down.

Remarks:

The application of the petitioners were ordered to be reconsidered without any reference to the Government notification. Arts 15(4), 336 and 340.

16. Citation of Case: S.A. Partha V. State of Mysore
A.I.R. 1961
Mys. 220

The High Court/The S.C. Mys.

The Judge who delivered the majority judgment A.N. Pai & M.I. Hussain JJ.

Brief facts and arguments:

Accepting the list of communities as socially and educationally backward as prepared by the Committee appointed by the Government of Mysore for this purpose in 1960, the Government passed two orders providing for reservation of seats in the Medical and Engineering Colleges in the State for such backward classes. Seats were also reserved for candidates of Scheduled Castes and Scheduled Tribes. In addition, the Government proceeded to appoint Committees for making selections of the candidates for admission to the several colleges and directed them to make their selection on the basis of merit as disclosed by marks obtained in the qualifying examination and the marks allotted by them at the interview for general ability and extra-curricular activities.

The Government orders were sought to be quashed on grounds that the reservation of seats in favour of the backward classes was unconstitutional and the procedure adopted by the Selection Committees particularly in matter of adding inter-view-marks was arbitrary and whimsical.

Summary of decision:

The Court held that:

1. Literacy as a test of educational backwardness adopted by the Backward Class Committee for the classification was both an intelligible one and in existing circumstances

reasonably related to the object to be gained.

2) The fact that the list of backward Classes might not be exhaustive of all the Backward Classes in the State was not such an infirmity as to require striking down the list made.

3) The fact that the classification can be made on other basis or other criteria is no ground for striking down one made on the basis or criteria not shown to be unreasonable. Further, the action of the State in selecting a criterion which enables it to perform its duty towards the advancement of the Backward Classes in preference to others which would delay such performance, cannot be attacked either as opposed to the Constitution or inspired by mala fides.

4) The selection of the candidates on the basis of marks awarded at the interview by the Selection Committee in addition to the marks obtained at the qualifying examinations could not be attached as objectionable or improper, since selection became inevitable, considering the fact that the seats available were much smaller than the number of applicants.

5) For reservation of a certain number of percentage of seats to be constitutionally correct or appropriate, it should not be in the nature of compartmentalisation but in the nature of a guaranteed minimum in the course of a general competition along all categories of citizens.

6) The schedule Caste, Scheduled Tribes and other Backward Classes are three different categories whose classification is based on different indicia and the classification of

Brief facts and arguments:

The rules of the University required the applicants seeking admission in any of the affiliated Colleges to produce a certificate of domicile if his parents do not fall within any of the categories enumerated in the relevant rules. The petitioner as his parents had recently settled down in the Andhra Pradesh, could not produce a certificate of domicile. Fearing that his application of admission in an Engineering College might not be rejected for want of domicile certificate presented the petition for a writ of mandamus directing the respondents to entertain his application for admission and to consider the same on the basis of merit ignoring the nativity certificate required to be produced.

Summary of the decision:

The Court pointed out the confusion that was existent in the mind of the petitioner regarding domicile and nativity certificate. The hurdle in the way of the petitioner was domicile certificate and not the nativity certificate.

The Court held:

Rule 6 of the Osmania University which calls upon every applicant to produce a certificate of domicile and classifies the candidates for this purpose into two groups, one consisting of candidates from Telengana area and children of Central and State Government officials and other group consisting of the rest of the candidates, contemplates a place of residence and not of place of birth. Hence, it could not be posited that R.6

offends against the principle embodied in Article 15.

Remarks:

Petition was dismissed.

Art. 15.

18. Citation of cases Nageshwara Rao v. Principal,
Medical College.

A.I.R. 1962

A.P. 212

The High Court/The S.C. Andhra Pradesh

The Judge who delivered
the majority judgment Chandra Reddy
C.J.

Brief facts and arguments:

A certain percentage of the total number of seats to Pro-professional course in medicine was reserved for students who had passed Higher Secondary Examinations known as Multipurpose examination. This reservation was challenged to be unconstitutional under Art. 14, 15, 16 and 29.

By an amendment of the Government notification reservation of seats was also made in favour of Senior Cambridge Candidates.

Summary of the decision:

The Court held that

1. The Articles 15, 16 and 29 are not attracted as they relate to discrimination based on grounds of religion, race, caste, language or any of them.

2. After considering the scheme for reorganization of secondary education, the distribution of seats was

permissible under Art. 14. It was to afford equal facilities and opportunities to students from Multi-purpose schools that this reservation was made. The distribution of seats was to extend to the candidates the guarantee of equal protection.

3. However, there was no justification for giving benefit of reservation to Senior Cambridge candidates. These candidates were not shown to be under unfavourable conditions like Multi-purpose candidates.

Remarks:

Petition were dismissed.

Arts. 14, 15, 16 and 29.

19. Citation of Case: Bansidhar v. University of Rajasthan

A.I.R. 1963

Raj. 172

The High Court/The S.C. Rajasthan

The Judge who delivered the majority judgment P.N. Shinghal
J.

Brief facts and arguments:

The Principal of a Government College affiliated to Rajputana University had refused admission to the petitioner to LL.B. Class. The ground for refusal was, that under an incorporated proviso to the rules of admission as laid down by the University, private candidates from other universities were not to be admitted.

However, this proviso was declared illegal by the

High Court and the petitioner had prayed for a writ of mandamus to the Principal directing him to admit the petitioner.

It was contended on behalf of the respondents that admission being discretionary with the Principal, writ could not be issued.

Summary of the decision:

The Court held:

1. That the matter of admission was not discretionary. Being the head of a public institution it was the duty of the Principal to act according to law in the matter of admission and he could not ignore the rules and refuse admission at his sweet will. The petition was maintainable.
2. A writ of mandamus could lie against public bodies compelling them to carry out their duties. The Universities being a public body and not having followed the relevant law regarding admission, a writ could be issued against it.

Remarks:

The petition was allowed.

Art. 14 and 15(1).

20. Citation of Case:

M.R. Balaji v. State of Mysore

A.I.R. 1963

S.C. 649

The High Court/The S.C.

S.C.

The Judge who delivered the majority judgment:

P.B. Gangendargadkar J.
(B.P. Sinha C.J., K.N. Wanchoo, K.C. Das-Gupta & J.C. Shah, JJ)

Brief facts and arguments:

The special provisions made by the Government of Mysore for advancement of its socially and educationally backward classes of citizens under Art 15(4) of the Constitution were challenged for the validity.

The reservation of seats for backward classes candidates for admission in Pre-professional classes in Medicine, it was contended, had infringed the right of the petitioners and were unconstitutional under Art. 15(1) & 29 (2).

It was contended that the basis adopted in the Order for classifying socially and educationally backward classes was unintelligible and irrational; that the extent of reservation prescribed by the said order is so unreasonable and extravagant that the Order, in law, is not justified by Art. 15(4), in substance, is a fraud on the powers conferred by the said Article on the State.

That it is not for the State, but for the President under Art. 340 of the Constitution to make special provision for the advancement of the Backward Classes.

That, if State does make such orders, then it is for the executive to do so.

Summary of the decision:

The Court held that:

1. Art. 340(1) itself shows that it is the Union or the State that has to take action in pursuance of the recommendations made (by the President for the same purpose under Art. 340 (1), and so, the argument

that the President alone has to act in this matter cannot be accepted.

2. It would be unreasonable to suggest that the State must necessarily mean the Legislature and not the Government.....Therefore, when Art. 15(4) contemplates that the State can make the special provision in question, the said provision can be made by an executive order and legislation for the purpose is not necessary.

3. Art. 15(4) was added by the Constitution (First Amendment) Act 1951. The object of this amendment was to bring Articles 15 and 29 in line with Art. 16(4). Art. 15(4) has to be read as a proviso or an exception to Arts. 15(1) and 29(2). If an order is justified by the provisions of Art. 15(4) its validity cannot be impeached on the ground that it violates Art 15(1) or Art. 29(2).

4. The Backward Classes contemplated by Art. 15(4) are in the matter of their backwardness comparable to the Scheduled Castes and scheduled Tribes. The backwardness under Art. 15(4) must be social and educational. It is not either social or educational, but it is both social and educational. For considering backwardness Caste is not an irrelevant factor, but should not be exaggerated. Other factors are also important e.g. poverty, occupation, place of habitation.

The classification of the socially backward classes of citizens made by the State proceeds on the consideration

only of their castes without regard to the other factors which are undoubtedly relevant. If that be so, the social backwardness of the communities to whom the impugned order applies has been determined in a manner which is not permissible under Art. 15(4) and that itself would introduce an infirmity which is fatal to the validity of the said classification.

5. It is only communities which were well below the State average that could properly be regarded as educationally backward classes of citizen. Classes of citizens whose average of student population worked below 50% of the State average were obviously educationally backward classes of citizens. Therefore the State was not justified in including in the list of Backward Classes, castes or communities whose average of student population per thousand was slightly above, or very near, or just below the State average.

6. The sub-classification made by the order of the Mysore Government between backward classes does not appear to backward classes does not appear to be justified under Art. 15(4). Art. 15(4) authorises special provision being made for the really backward classes. In introducing two categories of backward classes what the impugned order, in substance, purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced, compared to the most advanced classes in the State, and that is not the scope of Art. 15(4). The result of the method adopted by the impugned order is that nearly 90% of

the population of the State is treated as backward. The classification of the two categories, therefore, is not warranted by Art. 15(4).

7. It is because the interests of the socially at large would be served by promoting the advancement of the weaker elements in the society that Art. 15(4) authorises special provision to be made. But if a provision which is in the nature of exception completely excludes the rest of the society, that clearly is outside the scope of Art. 15(4). It would be extremely unreasonable to assume that in enacting Art. 15(4) the Constitution intended to provide that where the advancement of the backward classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting in rest of the society were to be completely and absolutely ignored. Considerations of national interest and the interests of the community or society as a whole cannot be ignored in determining the question as to whether the special provisions contemplated by Art. 15(4) can be special provisions which excludes the rest of the society altogether.

Speaking generally and in a broad way, a special provision should be less than 50% would depend upon the relevant prevailing circumstances in each case. Therefore, the reservation of 60% directed by the order of the Mysore Government dated 31.7.1962 in technical institutions is plainly inconsistent with Art. 15(4).

8. The executive action which does not potently or overllly transgress the authority conferred on it by the Constitution, but the transgression is covert or latent, is struck down as being a fraud on the relevant constitutional power.

9. The context, therefore, requires that the executive action taken by the State must be based on an objective approach, free from all extraneous pressures. The said action is intended to do social and economic justice and must be taken in a manner that justice is and should be done.

Remarks:

Petitions were allowed.

Arts. 15(4), 29(2) and 340.

21. Citation of Cases: Subharaya v. Mysore State
A.I.R. 1963
S.C. 702
The High Court/The S.C. S.C.
The Judge who delivered the majority judgment: P.B. Gajendragadkar J. (B.P. Sinha C.J., K.N. Das Gupta & J.C. Shah JJ.)

Brief facts and arguments:

Facts same as in the case of Balaji v. State of Mysore (Supra).

Respondents sought a classification whether the effect of the Balaji case decision was to invalidate the

reservations made in favour of Scheduled Castes and Scheduled Tribes also alongwith those made for Backward Classes.

Summary of the decision:

The above decision is applicable to this case also.

Reservations made in respect of Scheduled Castes and Scheduled Tribes cannot be deemed to have been affected by the Supreme Court decision in Balaji case.

Remarks:

Petitions were allowed.

22. Citation of Case: D.G. Viswanath v. Govt. of
Mysore A.I.R. 1964 Mysore 132.

The High Court/ Mysore
The S.C.

The Judge who delivered K.G. Hedge J.
the majority judgment:

Brief facts and arguments: The
constitutionality of the order of 26.7.63 of the
Mysore Govt. was questioned on similar grounds to those
raised in Balaji's case (supra). With the difference
that in this case classification of backward classes
was not made on grounds of caste, hence it was invalid
as based on imperfect scheme.

Further, another order of the State was also
challenged as conferring arbitrary powers on Selection
Committees appointed for the purposes of interviewing
and selecting candidates for admission. The order has
prescribed for the Interview Committees to give
certain number of marks under specified five heads.

(However, in practice the Committees had
misinterpreted the order and awarded marks in a consoli-
dated manner).

This second order was also challenged for
its constitutionality on the grounds that it was not
issued by the Minister in the manner prescribed by
Art. 166 of the Constitution.

Summary of the decision: The Court held that :

1. In addition to the "occupation" and
"poverty" tests, the State should have adopted the

"caste" test as well as the "residence" test in making the classifications and that to that extent the scheme adopted by the State was a very imperfect scheme, but not invalid.

2. The classification of socially and educationally backward classes made in the impugned order was a rational one and based on intelligible differentia and the basis of the differentiation had rational nexus with the policy intended to be implemented and the object tried to be achieved. Hence, it could not be struck down as invalid classification.

3. The contention that the Government in the matter of admitting students to Technical and Professional Colleges cannot provide for selection by laying down tests for making the selection is not correct. The qualification prescribed by the University is only the minimum requirement. The managements of the educational institutions concerned can insist on additional qualifications in the matter of selecting students for admissions to their Institutions. So long as the minimum qualification prescribed by the University is adhered to, there can be no objection even if they prescribe a selection examination.

4. Where the Court is satisfied that an order under Art 15(4) of the Constitution has been made by the Minister who was authorised to make it under the Rules of Business, mere fact that the source has not been expressed in the manner contemplated in Art. 166 is not

sufficient to hold that the order in question is invalid. The only effect of the non-compliance is that the Government is put to the task of proving the existence of that order.

5. The Government order relating to admissions of the backward classes students to the technical and professional colleges prescribed that the students should be interviewed by a Committee, that certain number of marks should be given and also specified five heads in respect of which marks were to be allotted, it did not mean that the Government had conferred an unguided power on the Committees. In the absence of specific collection of marks for each head, it must be presumed that the government considered that each of the heads mentioned in the order as being equal in importance to any other. In other words, intention of the Government was that each one of those heads should carry 1/5 of the "interview" marks.

However, the Selection Committees had misinterpreted the scope of the powers conferred on them and had not exercised the power conferred in a reasonable manner. The interviews were, therefore, held vitiated and were quashed.

Remarks: Petitions were allowed. Art 15(4), 14 & 116.

23. Citation of Case: Jacob Methew v. State of Kerala A.I.R. 1964 Ker. 39.

The High Court/ Kerala
The S.C.

The Judge who delivered C.A. Vaidialingan J.
the majority judgment

Brief facts and arguments: An order issued by the State Government making reservation of seats for backward classes-including Ezhavas and Muslims - for admission of students to Medical and Engineering Colleges in the State, was challenged as unconstitutional.

Another order of the Government was challenged for its constitutionality as it made a distribution of a percentage of seats in Medical & Engineering Colleges on district wise basis.

One more order of the Govt. was challenged. It was the reservations of seats in favour of the children of Registered Medical Practitioners and outstanding sportsmen.

These challenges were made under Arts. 14, 15(4) and 29(2).

Summary of the decision: The Court held that :

1. It is not necessary for the State Government to disclose in the Order making reservation of seats for backward classes any reasons for classifying the particular group mentioned therein as backwards. It is enough if the Government is able to satisfy the Court

by any relevant materials and circumstances that were available before them when they passed the impugned order.

2. While making special provisions for weaker sections of the society, State should take care not to exclude admission to higher educational centres to deserving and qualified candidates of other communities and that special provisions contemplated by Art. 15(4) must be within reasonable limits.

3. The backwardness under Art. 15(4) must be both social and educational and not either social or educational.

4. From the material adverted to by the State Government themselves it was clear that no proper approach was made to this important aspect and the inclusion of the Ezhavas and the Muslims as a whole as backward classes, was based on the test of caste, community and religion and no investigation regarding their economic condition had been attempted to be made. Hence, the classification is inconsistent with the requirements of Art. 15(4) of the Constitution.

5. The executive action of special reservation in favour of certain groups of society as backward classes taken under Art. 15(4) by the State Government, must be based on an objective approach. It is not on the subjective satisfaction of the State Government that a particular group is a backward group, or that the High Court cannot interfere with that satisfaction under Art. 226.

6. Art 15(4) itself provides for the manner in which the classification and in whose favour the classification is to be made. The Art lays down the test for the purpose of classification, namely the socially and educationally backward Classes. It also indicates the object for which the said classification is to be made. Therefore, Art. 14 does not at all come into the picture, when considering the reservation to be made under Art. 15(4).

7. Reservations made for Backward Classes do not take away the right of any number of that group from competing on the general merit basis, and securing as many seats as possible. These seats are obtained by them in their individual right guaranteed under Art 29(2), and not as a member of a backward class, for whom protection is provided under Art 15(4). To hold otherwise would mean that Art. 15(4) is invoked not for advancement and protection of the weaker sections but for the purpose of causing prejudice to the members of that class.

8. Principle of districtwise selection in the order was not based upon any scientific data collected, either regarding the student population of a particular area or having a due regard to the educational backwardness of a particular district concerned. On the other hand on the basis of the Census report of 1961, it had no relation with the object referred

by the State Government, namely, to advance the educational interests of the territorial divisions.

9. There was no legal basis for sustaining reservations in favour of the children of Registered Medical Practitioners and for outstanding sportsmen. There was no reasonable relation to the object which was to get best among the student population, for admission into professional Colleges.

Remarks: The petitions were allowed. Arts. 14, 15(4) and 29(2).

24. Citation of Case: State of Kerala v. R. Jacob
A.I.R. 1964 Kerala 316.

The High Court/ Kerala
The S.C.

The Judge who delivered
the majority judgment.

M.S. Menon
C.J. & Madhavan
Nair J.

Brief facts and arguments: Reservation of seats for certain classes of citizens classified as "socially and educationally backward" were challenged as unconstitutional being based on caste.

Reservation of seats for outstanding sportsmen were also challenged to be unconstitutional.

Arts. 14, 15 and 29 were in question.

This was an appeal of the decision in the writ petition case - Jacob Methew v. State of Kerala
A.I.R. 1964 Kerala 39.

Summary of the decision: The Court held that

1. The Ezhavas, Muslims and Latin Catholics inclusive of Anglo-Indians in Kerala State constitute "socially and educationally backward classes of citizens" within the meaning of Art. 15(4) of the Constitution and reservation of seats for them by the Kerala State Government was valid.

If the whole or a substantial portion of a caste is socially and educationally backward then the name of that caste can be a symbol or a synonym for a class of citizens who are socially and educationally backward and thus within the ambit of clause (4) of Art. 15 of the Constitution.

2. Various talents and attainments are necessary for the discharge of the various types of work that a generation of medical men may be called upon to perform. It cannot be said that the achievements in athletics will not produce a necessary type, with reserves of physical energy, capable of leadership, and unafraid of emergencies. An integrated individual who is good at studies and good at outdoor activities is far more suited not only to the medical profession but also to any other profession.

Hence, reservation in favour of outstanding sportsmen should be sustained.

Remarks: Appeal was partly allowed.

Arts. 14, 15(4) & 29.

25. Citation of Case: Anjali v. State of West
Bengal A.I.R. 1962
Cal. 832

The High Court/ Calcutta
The S.C.

The Judge who delivered Bose J.
the majority judgment.

Brief facts & arguments: The petitioner wanted her admission in Hoogly Mohsin College in B.A. Hons Economics but she could not secure it because of an order from the Government directing that no more women students be admitted in that College. The Government had established another College exclusively for women and to promote the development of the new College this order was passed. However, for subjects for which the Women's College was not granted affiliation by the University, students offering those subjects were allowed to attend classes at Hoogly Mahsin College. For economics Course this provision was made for the petitioner also.

The order of the Government was challenged as contravening Art. 15(1) read with Art. 29(2) by restricting admission of women students in the Hoogly Mohsin College.

Summary of the decision: The Court held that
1. Art 15(1) which is of wider application than Art. 29(2) prohibits discrimination on the grounds of sex on all matters and so it includes discrimination in matters of admission to educational

institutions. The result is that Art. 15(1) should be construed as controlling Art. 29(2).

2. Art. 15(1) has been expressly made subject to Art. 15(3) which enables the States to make a special provision for women and children in Art. 15(3) mean in favour of and not "against women and children".

3. The impugned order of the Director of Public Instruction was intended to promote the development of the new College for women and ultimately to make it a well established and self-sufficient organisation for the education of women and was thus a special provision as contemplated by Art. 15(3) of the Constitution, made in the interest of and for the benefit of women students in the country with the result that operation of Art. 15(1) was rested.

4. Art. 15(3) provides for only special provision being made for the benefit of women and does not require that absolutely identical facilities as those enjoyed by males in similar matters must be afforded to women also.

Remarks: The Petition was dismissed.

Arts. 15(1), (3), & 29(2)

26. Citation of Case: Anjali v. State of West Bengal
A.I.R. 1952 Cal.825.

The High Court/The S.C.: Calcutta

The Judge who delivered the majority judgment: Chakravarti (Ag) C.J. and Sen J.

Brief facts and arguments: Facts as in above case. It is an appeal from above judgment.

Summary of the decision: The Court held that:

1. The discrimination which is forbidden by Art. 15(1) is only such discrimination as is based solely on the grounds that a person belongs to a particular race or caste or professes a particular religion or was born at a particular place or is of a particular sex and on no other ground. A discrimination based on one or more of these grounds and also on other grounds is not hit by the Article.

2. On facts, the refusal to admit the appellant to a mixed college was not mala fide or based solely on the ground that she was a woman, but because under a scheme of better organisation of both male and female education at one place, which covered development of the Women's College as a step towards the advancement of female education, it was considered reasonable to restrict further admission of women student to the mixed College and hence there was no discrimination within Art. 15(1).

3. The ordinary meaning of 'provision for Art. 15(3) is certainty "provision in favour of Cl.(3) of Art. 15 which is an exception to Cl. (1) & (2) which forbid discrimination against any citizen on the ground of sex, the State may discriminate against male by making a special provision in favour of females.

Remarks: Appeal was dismissed.
Art. 15(1).

27. Citation of Case: Vikaruddin v. Osmania University
A.I.R. 1954 Hyd. 25

The High Court/The S.C.: Hyd.

The Judge who delivered the majority judgment: Srinivasachari J.

Brief facts and arguments: The petitioner had appeared before an Interview Committee for admission in M.B.B.S. Class of the University but he was not admitted. He contended that his right was injured in that candidates who had secured less marks in qualifying examination were admitted while he was rejected.

He claimed his right under Art.29(2) of the Constitution.

Summary of the Decision: The Court held that:

there was no inherent right in the petitioner to compel the University to admit him. Further, the Constitution does not guarantee to the student studying in an educational institution to enforce a right to be admitted to a class for no such right exists.

Hence, for securing admission in a college students must be approved by the college or by others to whom the college has delegated the power of exercising a discretion as to the persons they admit. If, therefore, an authority has exercised the discretion bona fide not influenced by extraneous or irrelevant considerations and such discretion has not been exercised arbitrarily or illegally the Court would not interfere.

Remarks: The petitioner was dismissed.

Art 29(2) referred.

221 Principals Case

Principal, S. Paul's College, AIR 1957 Ca. 524

The High Court/The S.C.: Cal.

The Judge who delivered the majority judgment: Sinha J.

Brief facts and arguments: The petitioner was a student of a Christian Missionary College. More than 90% of the students belonged to Hindu community. The petitioner and the other Hindu students were refused by the Principal's permission to celebrate Saraswati Puja within the College compound.

Summary of the Decision: The Court held that

the petitioner intended to force the hands of the authorities to allow idol-worship being conducted within the precincts of the College, must be declared misconceived and consequently rejected.

The Court observed that

(1) The contention that if as a result of Art. 29(2) there was a legal right in members of the Hindu community to get admission into the college, then they have every right under Art. 25 to freely profess, practise and propagate their religion within the precincts of the College receiving State aid is based on a misreading of Art. 25 of the Constitution. The Constitution protects the freedom of conscience and right freely to profess, practise and propagate religion, but it does not protect secular activities.

Under Art. 30 of the Constitution, Christian institutions opened primarily for the propagation of Christian religion and secondarily for rendering humanitarian services are within the bounds of law. There is nothing illegal in laying down conditions under which such services can be availed of, provided the conditions do not militate against public order, morality or health.

Such an institution cannot interfere with the belief and profession of religion, but it can control the outward manifestation of it within the boundaries of its property.

The petitioner had entered the college knowing its rules and limitation on the practise of worship within its precincts, now he cannot turn round and ask the college authorities to violate the basic principles upon which the institution has been founded.

Remarks: The petitioner was dismissed.

Arts. 29(2) & 30 referred.

Art. 25.

29. Citation of Case: Prakash Chandra v. State of M.P.
AIR 1962 M.P. 48.

The High Court/The S.C.: M.P.

The Judge who delivered the majority judgment: H.R. Krishnan J.

Brief facts and arguments: The petitioner was not selected by the Selection Committee for admission in the medical college though he had secured in the qualifying examination more marks than few others who were admitted.

Summary of the Decision: The Court held that there was no violation of the petitioner's right, as there was no such right to admission. And, it would be improper for the law Court to interfere with the discretion exercised by the Selection Committee.

Remarks: The petition was dismissed.

Art. 29(2) referred.

30. Citation of Case: In re Kerala Education Bill

AIR 1958 S.C. 956.

The High Court/The S.C.: S.C.

The Judge who delivered the majority judgment: S.R. Das C.J.
(N.H. Bhagwati, B.P. Sinha,
S.J., Imam, S.K. Dass &
J.L. Kapur JJ)
T.L. Venkatarama Aiyar J - contra.

Brief facts and arguments: The Bill had envisaged a scheme under which it would have been possible for the State Govt. to have greater control and wider interference with the management and working of educational institutions.

Conditions leading to the Govt. control and interference were attached to Govt. recognition and aid available to private institutions.

Summary of the Decision: The Court observed that:

(1) in modern times Private Institution cannot do without any Government Aid and recognition.

(2) Subjecting Aid available to Anglo-Indian Institutions under Art.337 of the Constitution to additional conditions and terms is ultra vires the Constitution.

(3) But such terms and conditions do not offend Art. 30(1) which entitles other private institutions to receive Govt. aid. The right of Anglo-Indian Institutions to receive Govt.-aid under Art. 30(1) is also not affected by the additional conditions.

(4) Cl. 20 of the Bill, which restricts collection of fees in primary classes in recognised but unaided institutions, without any provision for compensating the loss, is unconstitutional.

Subjecting recognition to new schools to this condition offends Art. 30(1).

(5) Cls. 14 and 15 of the Bill which authorises the Government to take over the management of aided institutions, and to acquire aided institutions in any area under different conditions and circumstances, are violative of Art. 30(1) of the Constitution.

(6) Though there is no fundamental right to recognition by the State, but to deny recognition except on terms and conditions tantamount to the surrender of their (minorities) constitutional right of administration of educational institutions of their choice is in truth and in effect to deprive them of their rights under Art. 30(1).

(7) The right to 'establish and administer' education institutions under Art. 30(1) does not include "right to maladminister".

Provisions aimed at ameliorating conditions of teaching and non-teaching staff are 'permissible regulations'.

(8) The right under Art. 30(1) is subject to cl.2 of Art. 29.

(9) The real import of Art. 29(2) and Art. 30(1) is that they clearly contemplate a minority institutions with a sprinkling of outsiders admitted to it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution.

(10) Minorities based on religion or language have right to establish and administer educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. The institutions are for conserving their religion, language and culture and at the same time they may also serve the purpose

to give a thorough, good general education to their children.

(11) Art. 30(1) should not be limited to apply only to educational institutions established after the commencement of the Constitution. The right to 'administer' covers pre-Constitution schools.

Remarks: The reference replied. Few provisions of the Bill held ultra-vires the Constitution.

Arts. 29 & 30 referred.

31. Citation of Case: Ramnikanta v. University of Gauhati

AIR 1951

Assam 163.

The High Court/The S.C.: Assam

The Judge who delivered the majority judgment Ram Labhaya J

Brief facts and arguments: The petitioner alleged that he was the founder-secretary of the Governing Body of a College at Dhubri which he claimed to be a minority college.

He contended that the resolution of the Executive Council of the University by which a scheme was made to recognise Governing-Bodies of non-Government Colleges, to be unconstitutional under Art.30(1) as it amounted to interfere in administration of a minority institution.

The respondent had contended that the college was not a minority institution as at the time of its establishment no such fact was stated and the donations were received for the college on understanding that it would be for benefit to all communities.

Summary of the Decision: The Court held that

(1) In order to bring the case under Art. 30(1), a minority community has to establish

its character first as a religious or linguistic minority. It is then to show that an institution was established by it, and it will then follow that it will have the right to administer the educational institution according to its choice. Without establishing the college, a minority cannot claim the right to administer it.

(2) The resolution of the Executive Council is a direction emanating from an executive authority and not from a quasi-judicial body, hence a writ of certiorari does not lie in such cases.

Remarks: Petition was dismissed.

Article 30(1) referred.

32. Citation of case: Arya Pritinidhi Sabha v. Bihar State

AIR 1958

Pat. 359.

The High Court/The S.C. Pat.

The Judge who delivered the majority judgment V. Ramaswami C.J.

Brief facts and arguments: The provisions of the Bihar Education Code and the orders of the Director of Public Instructions, issued thereunder to the existing managing Committee to hand over the charge to the ad-hoc Committee formed under the same orders, were challenged on Constitutional grounds under Arts. 29 & 30.

Summary of the Decision: The Court held that

(1) the school was a denominational one, run and managed by Arya Pritinidhi Sabha.

(2) The provisions of Art. 182(e) of the Education Code and the last clause of that Article must be held to violate Arts. 29 and 30 of the Constitution so far as it ~~is~~ authorises the Bd. of Secondary Education or its President

to make orders for imposing an ad-hoc Committee with regard to the denominational school of which the petitioners ~~are~~ trustees and in whom the control and administration of the school are vested.

The constitutional protection under Arts. 29 & 30 is, however, not absolute and it does not involve dispensation from obedience to general regulations made by the State for promoting the common good of the community. (e.g.) maintenance of discipline or standard or efficiency in the institutions.

Remarks: The application was allowed.

Arts. 29 & 30(1) referred.

33. Citation of Case: Dipendra Nath v. State of Bihar

AIR 1962

Pat. 101

The High Court/The S.C.: Pat. (F.B.)

The Judge who delivered the majority judgment: V. Ramaswami C.J.
(R.K. Choudhary
K.K. Shah JJ).

Brief facts and arguments: The petitioner was a Jt. Secretary of the Bankipur Samaj School. He was appointed Jt. Secretary for the Managing Committee appointed for the year 1960-61. He asked the M.C. of 1959-60 to hand over the charge to him. The Sect. of the old M.C. refused to hand over the charge and wrote to the petitioner under instructions from the Director of Public Instructions not to interfere with the management. By a letter Sect. to Bd. of Ed. informed the D.P.I. that the Samaj had no authority to constitute the M.C. in view of the Govt. Resolution laying down rules regarding management of High Schools, and the existing M.C. should continue to function.

The orders, it was contended, to be in violation of Arts. 29(1) & 30(1).

Summary of the Decision: The Court held that

(1) Under Art. 30 the Samaj as a religious minority has two rights - (a) to establish a school of its choice and (b) to administer it. The language of the Article does not require that the majority of the students in the school must be connected with the religion of the minority. The minority may establish educational institutions either (1) to conserve its religion, language or culture, or (2) purely for purpose of giving a thorough good secular education to their children.

(2) The order of the Government infringes the rights of the Samaj to manage and administer the school; and to the extent of infringement it is void and unconstitutional.

(other observations of the Court are same as in the above case.)

(3) It is true mandamus will not issue to a private individual in a matter of a purely private right. But, when it is the question of validity of the order of the Bd. of Sec. Ed. which ^{is} a public statutory body, and, of the resolution of the Govt., which are held to be unconstitutional, mandamus will be issued principally to the Bd. commanding them not to give effect to its order and to withdraw their recognition of the existing managing committee. To make the writ effective and as consequential to that writ order would go to the existing M.C. to make over the charge to the M.C. appointed by the Samaj.

Remarks: The application was allowed. Arts. 29(1) & 30(1) referred.

34. Citation of Case: Joseph Callian v. State of Kerala
AIR 1962
Ker. 33.

The High Court/The S.C.: Ker.

The Judge who delivered the majority judgment Madhavan Nair J.

Brief facts and arguments: The appellant was the manager of St. Joseph's Upper Primary School Mattathur. He challenged the constitutionality of the order of D.P.I. granting sanction and recognition to respondent no. 4 to start a new upper Primary School at Mattathur.

The appellant contended his rights under Art. 30(1) were affected by the said order.

Summary of the Decision: The Court held that

The right guaranteed under Art. 30(1) does not mean that the minority of a village has an exclusive right to conduct a non-denominational school in the village, unmolested by any competition from the majority population of the village. The setting up of a rival school by a member of the "majority community" cannot, therefore, be characterised as a violation of any fundamental right of the minority under Art. 30(1) or any other Article of the Constitution.

Remarks: Appeal was dismissed.
Art. 30(1) referred.

35. Citation of Case: Shri Krishna v. Gujarat
University
AIR 1962 Guj.
88.

The High Court/The S.C.: Guj. (F.B.)

The Judge who delivered
the majority judgment: J.M. Shelat J.

Brief facts and arguments: Statutes enacted by the Senate of the Gujarat University under the Gujarat University Act, 1949, were challenged on Constitutional grounds. The Statutes had provided for imposing on affiliated colleges Hindi or Gujarati as medium for instruction and for examination, to the exclusion of English medium.

The contentions were:

(1) On a true construction of S.4(27) whether read with new proviso or with the old proviso, the University has no power to impose Gujarati or Hindi as a medium of instruction and examination on affiliated colleges or to prohibit the use of English as a medium of instruction and examination by affiliated colleges and that statutes 207, 208 and 209, are, therefore, ultra vires and void.

(b) Even if S.4(27) with the proviso old or new refers to medium of instruction and examination in affiliated colleges, the power of the University under that Section does not extend to forbid the use of English or any other language as medium of instruction and examination.

(2) The new proviso substituted for the old proviso in S.4(27) by Act IV of 1961 is in any event beyond the legislative competence of the State Legislature since the subject matter of medium of instruction

14

and examination falls within ~~Entry 66 of List I, or is in~~ any event ancillary or subsidiary to the subject-matter or that entry and is, therefore, null and void.

(3) The imposition of Gujarati or Hindi as medium of instruction or examination or even as one of the media of instruction and examination on affiliated colleges, and forbidding them the use of English as medium of instruction and examination violates the fundamental rights conferred on religious and linguistic minorities under Articles 29(1) and 30(1) of the Constitution.

Therefore, the S.4(27) with proviso old or new and Statutes 207, 208 & 209 made thereunder are null and void.

The petitioner was informed by the Principal of St. Xavier's College, where the petitioner's son was studying, that his son could not be allowed to attend intermediate classes conducted in English medium, as the same was prohibited by the Statutes 207-209, passed by the University Senate under the University Act. The violation of the Statutes was threatened with withdrawal of recognition of application of the College to the University.

Summary of the Decision: The Court held that

(1) Statutes 207 to 209 in so far as they seek to lay down and impose Gujarati and/or Hindi in Devnagari script as the media of instruction and examination on institutions other than its own institutions are unauthorised and beyond the powers of the Gujarat University and the Senate and are therefore null and void as neither S.4(27) nor any other provision of the Act to lay down Gujarati or Hindi as a medium of instruction and examination for such institutions or to forbid the use of English as a medium of instruction and examination for and in such institutions.

Assuming however that Sec.4(27) and/or any other provisions of the Act do contain such power that power at best is only to lay down Gujarati or Hindi as one of the media of instruction and examination and not as the only medium to the exclusion of other languages and does not extend to forbid the use of English or any other language as a medium of instruction and examination and statutes 207-209 are, therefore, null and void.

(2) As the words "subject to the provisions of entries 63,64, 65 and 66 of List I" have the effect of excluding from the content of entry 11 the subject matter of entry 66 of List I, there cannot be any overlapping between the subjects of legislation in entry 66 of List I and entry 11 of List II.

The subject of medium of instruction in institutions of higher education is so connected with the topic of coordination and determination of standards in institutions of higher education that it can be said to fall within entry 66 of List I. Parliament alone can therefore legislate in regard to the subject of the medium of instruction and the State legislature would be incompetent to deal with the same.

(3) The words "of their choice" in Art. 30(1) if read with Art. 29(1) would mean that a minority has a right not only to conserve its own language and culture but also has a right to establish educational institutions of its choice and to administer them in such manner as the members thereof choose without the State having a right to impose upon them any particular mode or method of administering them. The effect of the Statutes 207-209 framed under S.4(25) and S. 33-A of the Gujarat University Act, is that at least

one minority viz. the Anglo-Indian, whose mother tongue is English, is prohibited by these enactments from establishing educational institutions of their own choice and to administer them in the manner such minority would think best suited. They are violative of the fundamental rights conferred on minorities by Articles 29(1) and 30(1). They are also repugnant to the spirit of liberal toleration enshrined in Art. 350-A.

Remarks:

The petition was allowed.
Art. 29(1) & 30(1) and Entry 66
of List I referred.

36. Citation of Case: Gujarat University v. Shri Krishna
AIR 1963
S.C. 703.

The High Court/The S.C. S.C.

The Judge who delivered the majority judgment; J.C. Shah J.
(B.P. Sinha C.J., S.J. Imam,
K.N. Wanchoo, N. Rajagopala
Ayyangar JJ)
K. Subba Rao J. dissenting.

Brief facts and arguments: Appeal from the above judgment.

The S.C. did not consider the question of infringement of fundamental rights under Arts. 29(1) and 30(1).

The Court considered only the question of competence of the State Legislature to enact laws concerning medium of instruction at Universities. The provisions of Seventh Schedule List I Entries 63-66 vis-a-vis List II Entry 11 were considered.

Summary of the Decision: The Court held that

(1) Statutes 207 and 209 in so far as they seek to lay down and impose Gujarati and/or Hindi in Devanagari script as an exclusive media of instructions other than those maintained by the University are unauthorized and

and therefore null and void, for neither S.4(27) nor any other provision of the Gujarat University Act, 1949, as amended by Gujarat Act 4 of 1961 empowers the University to lay down Gujarati or Hindi as an exclusive medium of instruction and examination in such institutions. (The H.C. decision upheld).

(2) The proviso to cl.27 of S.4 of the Gujarat University Act as amended by Act 4 of 1961 and S. 38-A are not invalid and ultra vires the State Legislature.

(The H.C. decision reversed).

The Court observed:

(1) Item 11 of List II and item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap; but to the extent of overlapping, the power conferred by item 66 List I must prevail over the power of the State under item 11 of List II.

(2) The validity of State Legislation would depend upon whether it prejudicially affects coordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of coordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Art. 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid.

(3) The power to coordinate is not merely power to evaluate, it is a power to harmonise or secure relationship for concerned action. The power conferred by item 66 List I is not conditioned by the existence of a State of

emergency or unequal standards calling for the exercise of the power.

(4) It is true that medium of instruction is not an item in the legislative list. It falls within item No. 11 as a necessary incident of the power to legislate on education; it also falls within items 63 to 66. In so far as it is a necessary incident of the powers under item 66 List I it must be deemed to be included in that item and excluded from item 11 of List II.

(5) By the amendment of the proviso to S.4(27) the legislature purported to continue the use of English as the medium of instruction in subjects selected by the Senate beyond a period of ten years prescribed by the Gujarat University Act, 1949. Imparting instruction through a common medium, which was before the Act the only medium of instruction all over the country, cannot by itself result in lowering standards and coordination and determination of standards cannot be affected thereby. No attempt was made to encroach upon the powers of the Union under item No. 66 List I.

37. Citation of Case: Sidhraj Bhai v. State of Gujarat
AIR 1963 SC 540.
- The High Court/The S.C.: S.C.
- The Judge who delivered the majority judgment: J.C. Shah J.
(B.P. Sinha, C.J.
S.J. Imam, K. Subba Rao,
K.N. Wanchoo & N. Rajagopala
Ayyangar JJ).
- Brief facts and arguments: The Gujarat & Kathiawar Presbyterian Joint Board run many primary schools and a Training College for Teachers - "Mary Brown Memorial Training College" - The teachers trained in the College are absorbed in the Bd.'s

schools or by the schools run by the United Church of Northern India.

In 1952 the Government issued orders to private training institutions to reserve 60% of their seats for the Government candidates. The society (either Bd.) protested and agreed to admit only 10 candidate nominated by the Government to each of the two years course.

In 1955, the reserve quota for the Government candidates was raised to 80% and the violation of the order was threatened with stoppage of grants-in-aid and withdrawal of recognition.

The contentions on behalf of the petitioners were: (1) the order violated property rights under Art. 19(1)(f) and also (2) rights under Art. 30(1) & (2) as available to minorities.

Summary of the Decision: The Court held that

(1) "The interference with the right of bare management of an institution does not amount to infringement of the right to property under Art. 19(1)(f)".

(2) Fundamental freedom guaranteed under Art. 30(1) is absolute in terms; it is not made subject to reasonable restrictions as is done with rights under Art. 19.

(3) Therefore, the right guaranteed under Art. 30(1) cannot be sacrificed in 'public or national interest'; otherwise it will be a 'teasing illusion or promise of unreality.'

(4) Conditions attached to grant or recognition, to be lawfully imposed, must be directed to making the institution while retaining its character as minority institution effective as an educational institution.

(5) Such regulations must satisfy a dual test, the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

Remarks: Petition allowed.

38. Citation of Case: Mohmed Hussain & others v. State of Hyderabad.

AIR 1953 Hyd. 298.

The High Court/The S.C.: Hyd.

The Judge who delivered the majority judgment: Mohd. Ahmed Ansari J.

Brief facts and arguments: A circular of the Hyderabad Government made it compulsory for teachers in Primary Schools to pass a regional language test within a particular period. This was challenged by some teachers as violative of Art. 14 of the Constitution. It was alleged that these teachers were being treated differently from other public servants.

Summary of the Decision: The test under Art. 14 was:
There must be a rational classification which meant a differentia between the person covered by the orders and those excluded, an object for which the order was passed and a nexus between the differentia and the object. The object was to carry out effectively the policy of education in its primary stages being given through regional languages. The provision that teachers must satisfy the test of knowing the language within a reasonable time with a view to give instruction was a rational nexus. The differentia between the public servants entrusted with the other functions of the State was also obvious. Hence there was no violation of Art. 14.

Remarks: The petition was dismissed. Art. 14 referred.

39. Citation of Case: In re Thomas AIR 1953
Madras 21.

The High Court/The S.C.: H.C. Mad.

The Judge who delivered the majority judgment: Rajamannar C.J.

Brief facts and arguments: The petitioner, a minor student, filing a suit through his father urged that certain provisions of the Madras Educational Rules relating to fee concessions to backward classes of students was violative of Art. 14. The provision, Appendix 17 of the Rules said that converts to other religion from backward castes enumerated therein would be entitled to a school fee concession if the conversion was that of the student himself or was that of his parent. The petitioner's grandfather had been converted to christianity from one of the backward classes mentioned in the provision. The refusal of the authorities to give him the concession was alleged by the petitioner to be on the basis of discrimination and he alleged that the concerned provisions in the Madras Education Rules and Appendix were violative of Arts. 14, 15(1), 16 and 46, because it made a discrimination between persons on the ground of their religion.

Summary of the Decision: (1) The petitioner's claim that he was a member of a backward caste enumerated in the Appendix itself was wrong as his grandfather had been converted to christianity which did not recognise the caste system.

(2) The State in granting an indulgence like fee concession was entitled to fix limits to its operation. A stipulation making the concession restricted to

conversions only one generation old was reasonable and there was no discrimination.

(3) It was not the petitioner's religion that was the reason for the restriction of the concession.

The petition was therefore dismissed.

Remarks: The petition was dismissed.

Art. 14 referred.

40. Citation of Case: Amrit Bazaar Patrika v. Board of Higher Secondary Intermediate Education, U.P.

AIR 1955 All. 595.

The High Court/The S.C. All.

The Judge who delivered the majority judgment: Upadhya J.

Brief facts and arguments: The Amrit Bazaar Patrika alleged that the Board in authorising only one newspaper to publish the results of examinations conducted by it was acting discriminatorily and hence violated Art. 14.

Summary of the Decision: (1) The duty enjoined by Art.14 was addressed to the 'State' which (Art.14) said that no person should be deprived of equality before the law and equal protection of the laws. Since it had been conceded that the Board was not the 'State' Art. 14 was not applicable.

(2) There was no right under the general law of the land for the petitioner to have access to the results.

(3) The Court would not also prescribe the way in which the Board had to perform its duties in the exercise of its powers as regards publication of the examination results conducted by it.

Remarks: The petition was dismissed.
Art. 14 referred.

41. Citation of Case

Surendra Kumar Jain & Others v.

Central Board of Secondary Education

The High Court/ The S.C. : Raj.

The Judge who delivered Bapna J.
the majority judgment

Brief facts and arguments: The Central Board of Secondary Education, Ajmer refused to admit the petitioners to the High School examination conducted by it on the ground that they were below 14 years of age. The petitioners' contention in challenging this order was that the Rajputana University which conducted High School examinations in Rajasthan had no such age limit and so the Board's order discriminated students in Ajmer and hence violated Art. 14 of the Constitution.

Summary of the Decision: (1) The fact that Rajputana University had no such lower age limit for its High School Examination was irrelevant for that examination was quite different and separate from the examination conducted by the Central Board and it was immaterial that the name of the examination in both cases was 'High School Examination'.

(2) As laid down in State of M.P. v. Mandawar (AIR 1954 S.C. 493) where the source of authority for the two Statutes differed Art. 14 had no application.

(3) The mere facts that the Rajputana University had its office in Rajasthan and conducted a similar examination as the Board for students in Rajasthan did not attract the application of Art. 14.

Remarks:

Petition dismissed.

Art. 14 referred.

42. Citation of Case: Chandrakant v. Secretary Vidarbha Education Board, Nagpur.

AIR 1958 Bom. 433.

The High Court/The S.C.: Bombay

The Judge who delivered the majority judgment: Mudholkar J

Brief facts and arguments: The petitioner, a candidate for the SSLC examination of the Vidharbha Education Board challenged Rule 7 of the Rules which gave a proportionate percentage of 'bonus' marks to NCC students in addition to the marks obtained in written examination. The petitioner alleged that this was unlawful discrimination and violated Art. 14.

Summary of the Decision: Mudholkar J. said: The Rule was enacted with a view to providing some kind of assistance to NCC students. On an examination of the nature of the NCC curricula and the time needed to be devoted to the additional branch of study the judge held that the classification rested upon a reasonable basis and had in effect removed an inequality.

Kotyal J. disagreed with Mudholkar J but held that the Court could not assist the petitioner because his legal right had not been made out.

Remarks: Petition dismissed. Art. 14 referred.

43. Citation of Case: Ramchandra Vishnu v. State of Madhya Pradesh.

AIR 1961 M.P. 247.

The High Court/The S.C.: M.P.

The Judge who delivered the majority judgment: K.L. Pandey J.

Brief facts and arguments: The petitioner, an applicant for admission to the Indore Medical College challenged the

"Medical Colleges in Madhya Pradesh Rules for admission 1960" as violative of Art. 14 because it permitted selective or preferential treatment to certain categories of applicants like women, proficient players of games and sons of relatives of 'political sufferers'.

Summary of the Decision: The admonition in Art. 14 addressed to the State does not directly confer any right on any person. It comes into operation only when there is law, i.e. statute or other law. Relying on the Supreme Court decision in Abdulla Rowther v. State Transport Appellate Tribunal (AIR 1959 S.C. 896) which said that executive orders properly so called did not confer any legal enforceable rights on any persons or impose any obligations the Court held that Art. 14 was not attracted in the present case as the "Medical Colleges in Madhya Pradesh Rules for admission, 1960" were merely executive or administrative instructions in a field which is not covered by any statute.

Remarks: Petition dismissed.

Art. 14 referred.

44. Citation of Case: Vikaruddin v. Osmania University.
AIR 1959 Hyd 25.

The High Court/The S.C. Hyderabad.

The Judge who delivered
the majority judgment Srinivasachari J.

Brief facts and arguments: The petitioner, an applicant to the Osmania Medical College, challenged Rule 11 of the General Rules which said that admissions should be on the basis of marks obtained by candidates who passed their qualifying examination 'in one attempt.' The petitioner contended that those who passed the qualifying examination and got more marks irrespective of the number of attempts they

made in passing the examination should be given preference to those who passed in 'one attempt' but got less marks.

Summary of the Decision: The principle that preference would be given to students who passed qualifying examination in one attempt was legal. A candidate who passed an examination in the first attempt would certainly be considered to be superior to a candidate who passed an examination in more than one attempt. Therefore, the attack of discrimination urged by the petitioner was imaginary.

Remarks: Petition dismissed. Art. 14 referred.

45. Citation of Case: Samir Kumar v. Someswar.
AIR 1953 Cal. 783.

The High Court/The S.C.: Calcutta

The Judge who delivered the majority judgment: Sinha J.

Brief facts and arguments: The petitioner who failed to pass the Matriculation Examination of the Calcutta University but passed the 'Final School Standard' Examination conducted by the National Council of Education, Bengal as a private candidate was refused admission to a college on the ruling given by the Syndicate of the University to the effect that the National Council's Examination could no longer be considered to be on a par with the Matriculation Examination of the University.

Summary of the Decision: If a student of a school affiliated to the University failed to come up to its standard but somehow passed an examination of another institution which had been recognised to be equivalent to it, but had been suspect for some time, the Syndicate of the University can refuse to admit him to a college if it is not satisfied that such a student had not achieved a standard which would make him fit for admission to a college affiliated to it. The facilities of mutual recognition extended to sister Universities or

educational institutions should not be used as devices to circumvent the educational programme of the University and to destroy its own standards.

Remarks: Petition dismissed. Art. 14 referred.

46. Title of Case: Chitralkha v. State of Mysore
AIR 1964 SC, 1243.

The High Court/The S.C. S.C.

The Judge who delivered the majority judgment: K. Subba Rao
(B.P. Sinha C.J., Raghubar Dayal,
N. Rajagopala Ayyangar JJ)
J.R. Mudholkar J Contra.

Brief facts and arguments: The petitioner, a candidate for admission to a Medical College in Mysore contended that the system of selection by interviews and viva voce examination was illegal and violative of Art. 14 inasmuch as it enabled the interviewers to act arbitrarily and to manipulate results.

Summary of the Decision: The Government by its order had laid down a clear policy and prescribed definite criteria in the matter of giving marks at the interview and had appointed competent men to make the selection. In the ultimate analysis, whatever the method adopted its success depended on the standard of the members constituting the selection committee and their sense of objectivity and devotion to duty. So long as the order laid down relevant objective criteria and entrusted the business to qualified persons the Court could not have any say in the matter.

Remarks: The petition was dismissed. Art. 14 referred

Summary of the decision:

The Court upheld the Regulations made under the University statutes and ordinances. The examination held under these regulations were held by the Court to be valid.

Further, the Court expressed its reluctance to entertain such application in order to support the University in its full control and guidance over students. The court also expressed its reprobation of the act of the 'misguided young men'.

Remarks:

Petition dismissed.

5. Citation of Case:

Triloki Nath v.
Allahabad University
AIR 1953 All 244

The High Court/The S.C.

Allahabad

The Judge who delivered
the majority judgment

Sapru J.

Brief facts and arguments:

The candidate, a student of B.Sc. had passed in two subjects but failed in third. The applicant attributed this failure to his weakness in the subject due to no arrangement being provided by the university for acquiring training in practical part of that subject.

Summary of the decision:

The court expressed its reluctance to interfere in the autonomy of academic bodies. He asked the applicant to make again representation to the university authorities who, the Court expected, would consider it in the light of the observation of the Court.

Brief facts and arguments: The petitioner had submitted a of copies of his thesis for LL.D and deposited examiners' fees. The examiners had given favourable recommendation by the Faculty did not approve it. The petitioner relying* Summary of The Decision:

The Court held that the mere fact that the authorities had acted according to the provisions of the Draft Ordinance would not make the Draft Ordinance valid Ordinances properly made under the provisions of the University Act. Further, that the Draft Ordinance did not mean that the faculty should have accepted the recommendations of the examiners at the earliest opportunity. The Faculty had full discretion in approving or disapproving it till it thought that the thesis was fit for publication. The Court would not interfere in the exercise of discretion by the Faculty, moreover when the Faculty had acted in no 'unfair or obstrute manner or mala_fide'.

"The Court again feels assured that the proceeding would not prejudice the considerations of the faculty when the candidate submits his thesis next time."

Remarks:

Petition dismissed.

4. Citation of case:

Shudarshan Lal v.
Allahabad University
AIR 1953 All 194

The High Court/The S.C.

Allahabad

The Judge who delivered the majority judgment

Malik C.J.

Brief facts and arguments:

The petitioners had failed at B.Sc. I annual and the supplementary examinations. They claimed that they should have been promoted to B.Sc. II on the ground that the University had no power to hold an examination at the end of B.Sc. I. The Executive Council had refused to interfere.

*on the Draft Ordinance, and its provisions, contended that the faculty should have declared his result.

Remarks:

Petition dismissed.

2. Citation of Case:

Samarendra Prasad Chakravarty
v. The University of Calcutta
AIR 1953 Cal.172

The High Court/The S.C.

Calcutta

The Judge who delivered
the majority judgment

Bose J.

Brief facts and arguments:

The petitioners were students of Class X. They had passed the preliminary that examinations conducted by the headmaster who was dismissed by the Managing Committee from the office - to entitle them to appear at the university examinations. The university, however, did not recognise this test and gave credit only to the test conducted by the officiating headmaster whose appointment was duly approved by the university.

Summary of the decision:

The Court held that the Syndicate was fully statutorily authorised to accord such approvals, issue notice etc. and its action was not mala fide.

Remarks:

The petition was dismissed.

3. Citation of Case:

G.P. Singh v. Faculty
of Law.
AIR 1953 All 6

The High Court/The S.C.

Allahabad

The Judge who delivered
the majority judgment

Raghüber Dayal J.

EXAMINATION CASES

Citation of Case: Gyan Dutt Sharma v. State of Ajmer AIR 1953 Ajmer 26

The High Court/The S.C.: Ajmer

The Judge who delivered the majority judgment: Nigam J.C.

Brief facts and arguments:

The petitioner was a teacher at a basic school. He has passed B.A. from Agra University as teacher candidate with the permission of the Director of Education. He applied again for the permission to the Director to allow him appear at M.A.I. examination. Meanwhile the Directorate issued a circular that no permission would be granted to teachers who had not completed 3 years of service, except in special cases.

The petitioner had requested the Court to issue a writ of mandamus to the Director directing him to grant the petitioner the permission asked for on the ground that permission was granted to some other applicants.

Summary of the decision:

The Court held that the Director had no power to grant or to refuse to grant permission to teachers to appear at university examination. It was for the university to allow a candidate to appear at examination or not. The Director could not be compelled to grant such permission only because he had granted the same to some others.

Asking the Director for permission to appear at examination is in the nature of asking for leave of absence during examination period. The Court held that the Director could not be bound with the promise of leave in advance.

Summary of the decision:

The Court held that

- (1) "The interference with the right of bare management of an institution does not amount to infringement of the right to property under Art. 19(1)(f)."
- (2) Fundamental freedom guaranteed under Art. 30(1) is absolute in terms it is not made subject to reasonable restriction as is done with rights under Art. 19.
- (3) Therefore, the right guaranteed under Art. 30(1) cannot be sacrificed in public or national interest; otherwise it will be a teasing illusion or promise of unreality.
- (4) Conditions attached to grant or recognition, to be lawfully imposed, must be directed to making the institution while retaining its character as minority institution effective as an educational institution.
- (5) Such regulations must satisfy a dual test - the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

6. Citation of Cases: Sidhraj Bhai v. State of
Gujrat
AIR 1963
S.C. 540
The High Court/The S.C. S.C.
The Judge who delivered Shah J.
the majority judgment: (B.P. Sinha C.J., S.J. Iman,
K. Subba Rao, K.N. Wanchoo
& N. Rajagopala Ayyangar JJ).

Brief facts and arguments:

The Gujrat and Kathiawar Presbyterian Joint Board run many primary schools and a Training College for teachers - "Mary Brown Memorial Training College". The teachers trained in the College are absorbed in the Bd's schools or by the schools run by the United Church of Northern India.

In 1952 the Government issued order to Private training institutions to reserve 60% of their seats for the Government candidates. The Society (i.e. the Bd.) protested and agreed to admit only 10 candidates nominated by the Government to each of the Two Years Course.

In 1955 the reserve quota for the Government candidates was raised to 80% and the violation of the order was threatened with stoppage of grant-in-aid and withdrawal of recognition.

The contentions on behalf of the petitioners were :

- (1) The order violated property right under Art. 19(1)(f), and also
- (2) rights under Art. 30(1) & (2) as available to minorities.

accepted piece of land offered by the villagers for construction of the school building, and the Educational authorities had approved the site and the plans.

But by a subsequent order the Dy. Director of Secondary Education informed the petitioners that the Government had decided that the school should be constructed on the land gifted by the ex-landlord of the village.

The petitioners contended that the order was illegal as being merely an executive action purporting to interfere with the property rights of the petitioner.

Summary of the decision:

The Court held that (1) The order had the force of law as it was issued under Bihar High Schools (Control and Regulations of Administration) Act, 1960. The State legislature had passed the Act as result of the decision of the S.C. in Dwarka Nath v State of Bihar; and S.9 of the Act validated all the previous orders issued by the Director of Public Instruction or the Board.

(2) The State legislature is competent to promulgate legislation with regard to the subject-matter of entry No.11 of the State list to validate doubtful executive action on the same subject.

Remarks:

Application was dismissed.

charge to the ad-hoc committee was illegal and violated their property rights under Art. 19(f) of the Constitution.

Summary of the decision:

The Court held that

- (1) The petitioners were holding school land and building as trustees for the purposes of the institution.
- (2) The Education Department purported to divest the petitioners of their character as trustees in respect of land and building of the school.
- (3) The Bihar Education Code was compilation of administrative orders, and did not have force of law.
- (4) Therefore, the order issued under Art. 132 of the Code did not have any force of law hence could not deprive petitioners of their rights in the properties aforesaid.

Remarks:

The Petition under Art. 32 was allowed.

5. Citation of Case: Ram Sharan v State of Bihar
 AIR 1961
 Pat. 274

The High Court/The S.C. Patna

The Judge who delivered
the majority judgment: Ramaswami C.J. and
 K. Singh J.

Brief facts and arguments:

The M.C. of the Priyabarta High English School had

4. Citation of Cases:

Dwarka Nath v. Bihar State

AIR 1959

S.C. 249

The High Court/The S.C.

S.C.

The Judge who delivered
the majority judgment

B.P. Sinha J.

(S.R. Das, C.J., H.N. Bhagwati,
K. Subba Rao & K.C. Wanchoo J)

Brief facts and arguments:

In 1954 amendments were made in Bihar Government Education Code. Among other changes, changes in service condition of teachers were introduced. Teachers were allowed to appeal the Education Department against punishment awarded by managing committees.

Considering himself more free to act the Headmaster of the Patna High School, showed discourtesy to members of the M.C. and neglected his duties. The M.C. found him guilty and discharged him.

The Ed. Department on appeal ordered his reappointment with which the M.C. did not oblige.

The Bd of Sec. Education appointed an ad-hoc M.C. and ordered the petitioners' M.C. to hand over the entire charge of the institution (including its property and management) to the ad-hoc committee. The properties were raised by the Secretary in his name on behalf of the M.C.

The M.C. claimed ownership rights in the properties and contended that the order asking them to hand over the

and conditions advanced to them and which they have voluntarily agreed.

(5) Wide extent of Governmental control on aided and recognised institutions has changed their status to quasi-government institutions.

(6) Fear that the G.O. imperils subordination of teachers to the management, which may result in indiscipline, implies the abuses alleged by the Government, i.e. unauthorized deductions and delays in payments. However, a deduction can and ought be made in the bill submitted by the headmaster.

(7) Interference by a third or outside agency (the Government) is voluntarily sought through recognition and aid, which the Government did not impose.

(8) The Court is not concerned with the allegation that the G.O. is but a first step of a deep and sinister plot to liquidate the private management so long the order is within the law.

Remarks:

Petition dismissed.

and terms, was ultra-vires the Constitution.

5. Restrictions against collections of fees in recognised but unaided institutions was an illegal interference, in absence of any financially compensating provision.

Jagad

Remarks:

The Reference replied Few provision of the Bill held ultra-vires the Constitution.

3. Citation of Case: Rev. FR. Joseph v. State A.I.R. 1958

Ker 290

The High Court/The S.C. Ker.

The Judge who delivered the majority judgment: Raman Nayar J.

Brief facts and arguments:

A.G.O. dt. 12.10.57 provided that salaries of teachers of aided schools were to be disbursed through the Headmasters of respective institutions and not through the Managers. The Court framed the issue thus: "The question is whether the previous ruling by which the grant was to the institutions and not to the teachers direct, and was payable to the Manager as the representative of the institution, are rules having the force of law so as to make the impugned order, which is confessedly only an executive order, illegal."

Summary of the decision:

(1) Under no statute or principle of common law institutions or their managers have any title or property in grants-in-aid.

Syed Jafar Imam, J.C. Das,
and J.L. Kapur JJ)

T.L. Venkatarama Aiyar J.

Brief facts and arguments:

The Bill envisaged a scheme under which conditions were attached to Government Recognition and Aid available to private institution. These conditions would have lead to greater interference in management of institutions..

Summary of the decision:

It was held that:

1. In modern times private Institutions cannot do without any Government Aid and Recognition.
2. The right to administer and establish educational institutions under Art. 30(1) does not include "right to maladminister."
3. Provisions aimed at ameliorating conditions of teaching and non-teaching staff were 'permissible regulations'.
4. Subjecting Aid available to Anglo-Indian Institutions under Art. 337 of the Constitution to additional conditions

Disputes between Managing Bodies, and Board
of Secondary Education and Government Education
Department

1. Citation of Case: Makhan Lal v S.K. Chattarjee
A.I.R. 1955

The High-Court/The S.C. Cal. 72
Calcutta

The Judge who delivered
the majority judgment Sinha J.

Brief facts and arguments:

On receiving complaints of mismanagement of Kanchipurá Boys H.S. School by the Principal and few members of the M.C.; after a check up the Bd of W.B. Secondary Education appointed an ad-hoc Committee which appointed a new headmaster. The Court considered: whether under the West Bengal Secondary Education Act, 1950 the Executive Committee of the Board was competent to appoint an ad-hoc committee and take over the administration of the School? Further, whether the powers exercised by the Committee amounted to illegal delegation of powers by the Board.

Summary of the decisions:

The Court interpreted the Bd's powers under the Act S36(2) (c) for 'supervision and direction' in the "widest sense possible" and held that the Committee's appointment was legal; further it was working under direction and control of the Bd which amounted to no delegation of powers.

The Court expressed its concern over the inability of the University to afford a student opportunity to get instructions in subjects which it allowed him to offer for examination.

Remarks: Application dismissed.

6. Citation of Case: Himendra Chandra v.
Gauhati University
AIR 1954 Assam 65

The High Court/The S.C. Assam

The Judge who delivered
the majority judgment Sarjoo Prasad C.J.

Brief facts and arguments:

The petitioner would have been declared successful at B.Sc.(Ag) Examination, had not the university interpreted a Rule in a manner as to require getting pass marks in two parts of one paper separately.

Summary of the decision:

The Court held that the University should have construed, the Rule 'very strictly, 'specially when it affects valuable rights of the examinees and is likely to jeopardise their career in life.

The court though unwilling to interfere with the internal discipline of the university and its autonomous working under the statute yet, when instead of providing the authorities sufficient opportunity to rectify the wrong they failed to do so, was compelled to ask the university, a statutory body to act according to correct interpretation of the Rules.

Remarks:

The petition was allowed.

7. Citation of Case: Tapendra Nath v.
University of Calcutta
AIR 1954 Cal 141

The High Court/The S.C. Calcutta

The Judge who delivered Sinha J.
the majority judgment

Brief facts and arguments:

The petitioner was not declared successful because of the marks obtained by him in his 'subject' chemistry were considered by the Syndicate and the Board of Examiners under two separate heads viz., Theory and Practical; while under Rule 6 as framed by the Senate Chemistry (consisting of theory and practical) was one 'subject'.

Summary of the decision:

The Court observed:

"The word 'subject' in rule 6 refers to the subject of 'chemistry' and not to be theoretical or practical paper in it. That being so, it is not open to the syndicate to apportion marks in chemistry between the Theoretical and Practical paper at its sweet will."

The Court had allowed time by delaying decision to enable the University to do the right thing but it did not do it. Hence the Court ordered the University to pay the costs to the petitioner.

8. Citation of case: Prasum Kumar v. R.S.College,
Jharia AIR 1954 Patna 486

The High Court/The S.C. Patna

The Judge who delivered Narayan J.
the majority judgment

Brief facts and arguments:

The petitioners were admitted to I.Sc. classes by the Principal of the institution, on the verbal understanding given to him by the Vice-Chancellor of the University to grant recognition for I.Sc. classes. The petitioners were also issued by the university admit cards to appear at examination, but later on they were not allowed to appear at the examination as it was found that the university had not granted affiliation to the college in I.Sc. classes.

On the basis of the verbal understanding given by the Vice-Chancellor and the issue of admit cards the petitioners urged the Court to apply the rule of estoppel and issue a writ under Art 226 of the Constitution.

Summary of the decision:

The Court held that,

(1) the power of affiliation vested in the Senate, therefore, the understanding given by the V.C. was of no legal value.

(2) A representation or admission on matters of law cannot constitute any basis for estoppel. When the statute authorises the senate only to grant affiliation, understanding given by the V.C. or careless issue of admit-cards could not ^{be} taken into consideration for granting a writ.

Remarks:

Application dismissed.

9. Citation of Case: Gauhati University
v. Sailash Ranjan
AIR 1955 Assam 9

The High Court/The S.C. Assam

The Judge who delivered
the majority judgment Deka J.

Brief facts and arguments:

The University had interpreted 'subject' (Geography) under R 14 as consisting of two independent half papers, each as a subject. Under this interpretation the petitioner respondent was declared unsuccessful at B.T. examination.

The Asstt. Dy. Commissioner K & J Hills, who had heard the petition in the first instance, had awarded damages against the University and issued injunction to declare and publish the petitioner's result in the list of successful candidates.

Summary of the decision:

The Court held that there was nothing to indicate or even to imply that the two half papers on the (geography) subject would be considered to be two separate or independent subjects.

R.7 of the Calcutta University B.T. Examination Rules also admit of no other explanation.

Therefore the interpretation given by the Court below were upheld as correct interpretation of the word 'subject'.

Remarks:

Appeal failed.

10. Citation of Case: Jai Chand Rai v.
State of Punjab
AIR 1955 Him.Prad 9

The High Court/The S.C. Punjab.

The Judge who delivered
the majority judgment Ramabhadran J.C.

Brief facts and arguments:

The petitioner for his I.A. examinations had offered Urdu as elective and Hindi as optional. Later under directions from the University he had to make Hindi as elective and Urdu as optional. He failed in English and Hindi. He made a representation that his failure was due to the change in his subjects and requested that either be declared as passed or allowed to sit again only ⁱⁿ English and Hindi papers.

He also contended that the rule (under which he was required to change his subject) offended Art 15(1) of the Constitution as (1) it allowed Persian, Arabic, French or German be offered as an elective subject but not Urdu, (2) European, Anglo-Indians women candidates were allowed to offer Urdu as elective subject.

Summary of the decision:

The Court held that (1) The classification made by the University was neither arbitrary nor capricious.

(2) The Punjab University is State-aided but not State maintained, hence its regulations do not come within the prohibition enacted under Art. 15(1).

(3) The relief asked for by the petitioner could not possibly be granted by this Court.

Remarks:

Petition rejected.

11. Citation of Case: Damodar Mohanty v.
Utkal University
AIR 1955 Orissa 151

The High Court/The S.C. Orissa

The Judge who delivered
the majority judgment Narasimham J.

Brief facts and arguments:

The petitioner had failed in his LL.B. I examination because the paper on International Law was wrongly set. Three questions, of which one was compulsory, were set from 'war and Neutrality' part while the prescribed part was 'Peace' only.

Summary of the decision:

The Court held that

(1) The three questions set from the unprescribed course was ultra vires and to be completely ignored.

(2) The Court was not competent to declare the candidate as successful, it was the function of the Syndicate.

(3) The Syndicate should reconsider his representation and take appropriate action in the light of the observations made by the Court, and according to law.

Remarks:

Directions issued.

12. Citation of the Case: Laxmi Narayan v. C.B. Mahajan
AIR 1955 All 534

The High Court/The S.C. Allahabad

The Judge who delivered
the majority judgment Mukerji J.

Brief facts and arguments:

The petitioner had appeared as a teacher candidate

at B.A. examination of Agra University and was declared successful. Later on it was found that he was not a teacher but was a clerk in an educational department of Madhya Bharat. The Executive Council by a resolution declared his result cancelled.

The petitioner contended that at the time when he filled the application form for B.A. examination he was doing some part-time teaching work, and secondly the Executive Council was not authorised to cancel his result.

Summary of the decision:

The Court held that

(1) On the statute there was no specification as to who is a teacher candidate. Therefore a teacher whether he is a whole-time or part-time paid or honorary, could appear at examination. The explanatory note added in the application form cannot be taken notice of by the Court.

(2) The Ex. Council had exceeded its jurisdiction and its powers in making its Resolution. The University can cancel a degree already conferred only under the circumstances and in the manner laid down by S.34 of the Act.

Remarks:

The Resolution quashed.

13. Citation of Case: Km. Indra Bajaj v. The
Agra University.
A.I.R. 1956 All 576

The High Court/The S.C.: All

The Judge who delivered
the majority judgment: Gurtu J.

Brief facts and arguments: The petitioner had failed in M.Sc.(Prev.) exam. 1955. On applying for permission to appear at 1956 examination she was informed by the Registrar that under the statute as amended by the Governor she was not eligible to appear at the 1956 Examination.

It was contended that the Statute (Amending Statute) was ultra vires the powers conferred by the Agra University (Amendment) Act.

Summary of Decision: The Court found that the impugned Statute as amended by the Governor was ultra vires.

Under the interim writ the petitioner had already appeared at the Examination. Writ of Mandamus was issued to declare her result.

Remarks: Mandamus issued.

14. Citation of Case: Kamla Banerjee v. Calcutta
University. AIR 1956 Cal 563

The High Court/The S.C.: Cal.

The Judge who delivered
the majority judgment: Chakravarty C.J.

Brief facts and arguments: The appellant had appeared for the B.T. Examination at the Asutosh Hall Centre but could not complete her one paper as a serious pandemonium was created by the

examinees who found that the examination paper was too stiff.

To 57 candidates who had thus missed their III paper, the University had awarded in that paper marks proportionate to marks obtained by them in other papers in which they had appeared.

In spite of several representations made by the petitioner-appellant to the University her case was not considered. She made a petition to the Court praying that (1) she might also be awarded proportionate marks in the III paper as was done in 57 other cases; (2) the university be directed to hold a fresh examination in the III paper alone.

Sinha J. who delivered the judgment in the petition case held that -

(1) By awarding proportionate marks, the syndicate had acted illegally, therefore, the Court could not ask to do an illegal act again.

(2) When the examination in the III paper had fallen not because of any fault of the university, and the University had decided to deal with the situation in a particular manner which is within the Rules, the Court would not be justified to direct the University to act in another manner.

(3) In the meantime the University had allowed all the candidates to appear at the subsequent year examination in the Theoretical section alone; had this not been done the Court might

have thought it necessary to issue appropriate direction for a further action to be taken. Since it was not needed, no interference by the Court was called for.

Summary of Decision: The Court dismissed the appeal thus upholding the judgment of the petition case; but with few more observations: (1) The Court felt embarrassment that though the appellant had a just grievance, no relief either the prayed for, or otherwise was possible to award.

(2) The University was not a sovereign body with unlimited powers to confer ordinary academic degrees in any manner and on any one.

Rules do not provide toward marks in vacuum.

Residuary powers could not be construed to authorise awarding marks (1) non-existing answer papers (2) which might be considered to be answers of average quality as in other papers actually answered. (The two fictions).

(2) The Court differed from the petition judgment and held that there would be nothing illegal if the university decided to hold a fresh examination in that paper alone.

(3) The Court condemned the behaviour of the examinees who were going to be the future teachers and held that all would have appreciated even the sternest measures taken against the defaulting candidates, had the University taken them in bold and straight forward manner.

But the course adopted by the University was defective. It was not clear why the Syndicate thought that only those who returned to the Asutosh Hall had the intention to appear at the examination. (The Court pointed out many other irregularities committed by the University; including its punishing some candidates by debarring them from subsequent examination without providing them any opportunity to be heard and in a whole-sale manner without any enquiry).

(4) Responsibility for setting so stiff paper ought to be borne by the University.

Remarks: Appeal dismissed.

15. Citation of Case: Registrar, Mad University v. Sundare A.I.R. 1956 Mad 309.

The High Court/The S.C.: Madras

The Judge who delivered the majority judgement: Rajamannar C.J.

Brief facts and arguments: The petitioners-

respondents were declared eligible for admission to University course of studies with endorsement stamped for the purpose on their S.S.L.C. Book.

The two petitioners had passed one year of their Intermediate classes and were promoted to the other, when it was discovered on publication of Fort St. George Gazette, that they were not eligible for the course.

The error in the case of the third petitioner was detected quite early.

It was pleaded that the rules of estoppel should be applied to these cases.

Summary of Decision: The Court applied the rules of estoppel in two cases but in the case of the third petitioner his guardian was found to be at fault in not withdrawing his ward when the Principal had intimated him for same in time.

The Court observed that it was not the case of a sentimental estoppel but a case of legal equitable estoppel which satisfied practically all the conditions embodied in S.115 of the Evidence Act.

Remarks: Appeal allowed.

16. Citation of Case: Somesh Charan v. University of Calcutta A.I.R. 1957 Cal. 656

The High Court/The S.C.: Calcutta

The Judge who delivered the majority judgment: Sinha J.

Brief facts and arguments: The petitioner had failed in Ist year at one college. He took T.C. and joined in Ist year the college where his father was Principal. He within a month of admission appeared at the supplementary examination held in his later college and was promoted to 2nd year. Thereafter some time his father resigned from the college. While he was appearing at the Test-Exams. of 2nd year, the University informed the then Principal that the Syndicate did not

approve of the admission of the petitioner to the college. He was, however, allowed to complete his examination. If the order of the Syndicate stands the petitioner would not be able to appear at the final University Examination.

The petitioner contended that his no action was contrary to any rule or regulation, therefore the order was illegal.

The University contended that the petitioner had played a fraud upon the statute by circumventing its provision.

The statutory provision (cl. 20) was that no student could be admitted to a higher class in another college within 12 months if he had failed in one college and was not promoted.

Summary of Decision: The Court found that legally, i.e. as the statutory provision could be interpreted, there was nothing wrong in the petitioner's admission and promotion to a higher class in an institution other than the one in which he had failed.

'Fraud upon a statute' is a high sounding expression. It cannot be used when certain course of action has been according to the letter of a statute. If that course of action is not desired the statute should be changed. Moreover, the University had not objected to the admission at an early stage. Now, when the petitioner had been allowed to continue for a whole year, then to stop him in the middle of the test was neither fair nor just.

The University was ordered to allow the petitioner to appear at the annual University examination, if he was otherwise entitled to do so.

Remarks: The petition was allowed.

17. Citation of Case: University of Calcutta v. Somesh Charan A.I.R. 1958 Cal 31.

The High Court/The S.C.: Calcutta

The Judge who delivered the majority judgment: Chakravarti C.J.

Brief facts and arguments: Facts same as in the petition-case supra.

Summary of Decision: The Court interpreted the real intent of the Cl. 20; that is the promotion to a higher class at an institution before completion of 12 months after the failure at another institution was illegal. However because of lacuna existent in cl. 20 the course of action taken by the respondent-petitioner could be possible. Proper amendment of cl. 20 was suggested.

The Court, however, held that the order objecting the admission of the petitioner was neither legal nor within the jurisdiction of the Syndicate. No question of the syndicate's approval arose when the admission was taken in complete accordance with the rules contained in the Ordinance. There was also not any rule requiring Syndicate's approval of a candidate's

admission to a college. Further, if any objection to the admission was at all possible, it was under Cl. 20 which prohibited admission to a "higher class" in another college, but the order did not refer to admission to a 'higher class', it objected simply his admission to the college, hence invalid.

Remarks: Appeal dismissed.

13. Citation of Case: Surendra Kumar v. Central Board of Secondary Education AIR 1957 Raj 206.

The High Court/The S.C.: Rajasthan

The judges who delivered the majority judgment: Bapna and Sharma JJ.

Brief facts and arguments: Regulations of the Bd prescribing age limits for appearing at H.S. and Intermediate as 14 & 16 yrs respectively, was challenged as discriminatory and violating Art.14 of the Constitution in that as there were no such limitations applicable to candidates appearing for similar examination under Rajputana University.

Summary of Decision: The Court held there was no discrimination and there was no violation of Art.14 of the Constitution.

Bapna J.:

(1) The Regulation was equally and indiscriminately applicable to all candidates wishing to appear at examination under the Board.

(2) The Regulation passed by the Bd were not laws within the meaning of Art.13 of the Constitution.

Sharma J.:

Rajputana University and the Bd were two different sources for their respective Regulations, hence dissimilarity amongst them was not violation of Art. 14.

Remarks: Petition dismissed.

19. Citation of Case: Meena v. Madras University
AIR 1958 Mad 494

The High Court/The S.C.: Madras

The Judge who delivered the majority judgment: P. Ayyar J.

Brief facts and arguments: The petitioner had prepared for her B.T. degree examination of the Madras University on understanding that the degrees of S.N.D.T. Women's University of Bombay of which she was a graduate, were recognised by the Madras University. She was also issued the hall ticket and was examined for her practicals but before theory examinations she was informed that she could not sit in the examination as the University had not recognised the degrees awarded by the S.N.D.T. Women's University.

Contention: (1) Rule of estoppel should be applied.

(2) As the Inter-University Board had recognised degrees of S.N.D.T. University, the Madras University should also recognise it.

(3) Under residuary powers the university should allow on special case to appear at the examination.

Summary of Decision: The Court held that

(1) There was no legal or equitable estoppel, only a moral estoppel can be a ground for recommendation ad misericordiam.

(2) The Madras University is an autonomous body and its discretion to recognise or refuse to recognise degrees of a certain university could not be interfered with.

(3) Though the residuary power is there with the University but the Court neither had power to interfere with the University's discretion nor it would like to do it.

Remarks: Petition dismissed.

20. Citation of Case: G.K. Ghose v. University of Calcutta AIR 1958 Cal 83.

The High Court/The S.C.: Calcutta

The Judge who delivered the majority judgment: Sinha J.

Brief facts and arguments: The petitioner had failed in 1954 examination. In 1955 examination he was caught for using unfair means and was debarred from 1956 Examination. He applied to appear in 1957 examination under R.4-B which allowed a failed candidate to appear at any of the two following examinations only, the University refused the permission considering that the prescribed period of 'the two following examinations' was over.

Summary of Decision: The Court interpreted that the 'two following examinations' should mean the examinations in which the candidate could sit and would not include an examination in which he could not sit by an order of the University itself. Any other interpretation would be unjust and harsh.

Remarks: Petition allowed.

21. Citation of Case: Shobha Bhatnagar v. The State
AIR 1959 M.P. 367

The High Court/The S.C.: Madhya Pradesh

The Judge who delivered
the majority judgment: Shiv Dayal J.

Brief facts and arguments: The petitioner was a student of XI in 1957 at Gwalior. She had to take her T.C. and go to Mandleshwar where her father was transferred. In 1959 she sought permission from the Bd to appear as a private candidate for Intermediate Exam. The Bd refused under Rule 5 of the Regulations considering her as a 'detained' candidate of XI class.

The two judges had dismissed the application while the third had allowed it; therefore it was referred to the present court.

Summary of Decision: The Court interpreted the word 'detained' used in Rule 5 to mean and to be applicable only to candidates who failed to secure percentage of marks requisite for promotion or adopted unfair means at examination. The word 'detained' did not apply to candidates who choose to leave institution at any time.

The rule did not apply to the petitioner.

Remarks: Application allowed.

22. Citation of Case: Purshottam Das v. Bd. of
Secondary Education AIR 1962
M.P. 3

The High Court/The S.C.: Madhya Pradesh

The judge who delivered
the majority judgement: Dixit C.J.

Brief facts and arguments: The petitioner when he had appeared at practical examination was informed that he could not sit for theory examination as he was found to be short of requisite attendances at classes held during the session.

Summary of Decision: The Court held that under Regulation 9 candidate was considered to have fulfilled all the conditions if he was allowed to appear in any subject in the examination. Thus when the petitioner was allotted a roll number and had appeared at practical examinations, the necessary implication was that the deficiency of the petitioner's attendance was such which could be condoned and was condoned under the regulation applicable to him.

Remarks: Petition allowed.

23. Citation of Case: Amitava v. Principal B.E. College
A.I.R. 1962 Cal 93

The High Court/
The Supreme Court: Calcutta

The Judge who delivered
the majority judgment: B.N. Banerjee J.

(contd.)

Brief facts and arguments: In the results of his B.E.I. Examination, the petitioner was declared eligible for compartmental examination in some subjects. But his fee for the compartmental examination was refused by the Cashier under directions from the Principal. The Principal had refused the permission as the petitioner had not appeared at the suitability test for the next time. The University on representation by the petitioner had ordered the Principal to recommend his application to appear at the examination, as it was not necessary for the petitioner to appear again at the said test.

Summary of Decision: The Court pointed out the mistake which the Principal committed in overlooking the difference in language used in Sec 3(b) and Sec 9(a) Chapter LI of Regulation.

Under S.3(a) the Principal is required to certify that the candidate is fit to take the examination - hence the suitability test. Under S 9(a) the candidate may be allowed to appear at the examination merely "on the recommendation of the Principal" - the recommendation need not be for the academic fitness to appear at the examination, hence no suitability test necessary. He might have grounds to refuse to recommend as the grounds of moral turpitude or indiscipline or any other similar ground, none of which was here.

Remarks: Petition allowed.

24. Citation of Case: Shanker Rastagi v. Principal
S.M. College AIR 1962 All 207

The High Court/The S.C.: Allahabad

The Judge who delivered
the majority judgment: Dhavan J.

Brief facts and arguments: The appellant had stood 3rd in the class at the terminal exams. of B.Com.I. Along with other 30 students he did not appear at the annual examination on medical grounds. All the absentees (except one a brilliant but T.B. patient student) were required to appear at the supplementary examination.

The appellant objected to the discrimination made between him and the excepted candidate, and attributed malice, motives and arbitrariness to the conduct of the authorities.

Summary of Decision: The Court did not find anything wrong with discrimination made between the petitioner and the exempted candidate.

The Court observed that it has no jurisdiction to interfere with the discretion of the Principal in internal affairs of the college, as there had been no violation of law and no arbitrariness or malafides were proved.

The Court condemned the demeanour of the student in making false allegation against the authorities and for showing disrespect to his teachers.

Remarks: Appeal dismissed.

25. Citation of Case: Chittra Shrivastava v. Bd. of
H.S. & Int. Exams
AIR 1963 All 41

The High Court/The S.C.: Allahabad

The Judge who delivered
the majority judgment: Katju

Brief facts and arguments: The petitioner's result was withheld on ground that she was not eligible to appear at examination as her attendance was short by 7 while the Principal could condone only 5.

The action taken by the Bd was challenged on the ground that she was not allowed to explain her case and the Bd had relied only on the Principal's report.

Summary of Decision: The Court accepted the contention of violation of rules of natural justice in that the action of the Bd to withhold or cancel the result was a penal action which would adversely affect the career of the student and would be a stigma on her career.

The Bd's order was quashed and it was asked to reconsider the case after giving opportunity to be heard to the appellant.

Remarks: Appeal allowed.

26. Citation of Case: Gyanendra Wir Singh v. University
of Allahabad. AIR 1963 All 596.

The High Court/The S.C.: Allahabad

The Judge who delivered
the majority judgment: V.G. Oak

Brief facts and arguments: The petitioner had failed at LL.B. final examination.

His contention was that he had actually passed the examination as the reservation of 4 marks out of 100 in a paper, which were to be awarded on general impression was illegal. The petitioner had secured 33/100 in a paper while the minimum were 36/100.

Summary of Decision: The Court treated the 'general impression' as part of the written examination. The general impression could be gathered from written answers.

and the fact that the petitioner had obtained only 33/100 and not 36/100, he could not be declared pass.

Remarks: Petition dismissed.

27. Citation of Case: Rita Majumdar v. Rajasthan University AIR 1964 Raj.64

The High Court/The S.C.: Rajasthan

The Judge who delivered the majority judgment: Ranawat C.J.

Brief facts and arguments: The petitioner in her 1st petition contended that the marks 66/200 secured by her in chemistry instead of being awarded in two separate papers were awarded in total.

The petition was rejected on finding that the request was merely that the marks awarded should be split over on individual question. The request was held to be of no merit.

In the present petition she had made the changes in contention that the total marks awarded to her were 66/160 while the sessional marks 40-45/50 obtained by her were not added to them.

Summary of Decision: The Court applied the principle of resjudicata, on ground that the petitioner was aware of the changed facts when she had filed the earlier petition, but had not disclosed them.

Remarks: Petition dismissed.

28. Citation of Case: G.C. Mehrotra v. Allahabad University AIR 1964 All 254.

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment: V. Bhargava, J.

Brief facts and arguments: The appellant had failed in aggregate only by 1 mark. It was found that in one paper he was not awarded marks (out of marks reserved for general impression). The V.C. asked the Dean to award the marks on general impression gathered from answered question in that paper. The V.C. cancelled his order when he was told on a telephonic talk with the examiner that the latter used to make consideration for marks on general impression while awarding marks on written answers and where he did not think proper to award those marks, he did not award them separately.

The cancellation of the order had affected the appellant, hence the petition was filed.

Summary of Decision: The Court held that the Examiner should have allotted marks on each question and where he did not want to award marks he should have put down zero. An omission to

allot marks would amount to failure to allot marks. Otherwise, how it could be distinguished that the examiner had not consciously given any mark or omitted to award any mark.

As to V.C.'s power to ask the Dean to rectify the omission, the Court found it illegal under Ordinance 13 of Chapter 29.

As at such late stage it was not possible for an examiner to remember whether the omission was accidental or genuine, the copy should be re-examined to rectify the omission.

What action would be proper, was for the V.C. to decide under the rules,

Remarks: Appeal partly allowed.

Examinations - Debarring from

1. Citation of case: Loknath v. Utkal University
A.I.R. 1952
Orissa 198

The High Court/The S.C.: Orissa

The Judge who delivered the majority judgment: Das C.J.

Brief facts and arguments: The petitioner had appeared

at an University examination, and passed it but by a resolution of the University he was declared to have failed and was debarred from appearing for examination.

It was contended on his behalf that the resolution was based on the suspicion of use of unfair means and he was afforded no opportunity of being heard.

Summary of the decision: The proceedings at the Court became unnecessary as during the hearing by the Court, the University authorities by a resolution agreed to reconsider the case after affording the petitioner opportunity of being heard.

Remarks: Application dismissed.

2. Citation of case: Dipa Pal v. University of Calcutta.
A.I.R. 1952
Cal. 594.

The High Court/The S.C.: Calcutta

The Judge who delivered the majority judgment: Bose J.

Brief facts and arguments: Without any information of charges or affording any opportunity to be heard, the petitioner who had secured pass marks in all her papers for B.A. degree exams, was debarred from obtaining the degree on the suspicion raised by the examiner in one paper for her using unfair means at the examination.

Summary of the decision: The Court held that,
1) The regulations which required the Examination Board to 'consider' the cases meant 'a decision not merely depending upon opinion but depending upon inquiry or investigation.

2) And also in view of the consequences of the action taken by the Board and confirmed by the Syndicate, it was necessary to consider the act as quasi-judicial.

3) The omission to give notice of charges and to afford opportunity to be heard, were violation of principles of natural justice.

Remarks: The petition was allowed.

Note: The Court also pointed out a distinction also in cases of use of unfair means detected in examination hall on the one hand and those detected at some later stage-not in presence of the suspected candidate. In the former situation the candidate gets an opportunity to know the charges and may also to challenge them on the spot, while no such opportunity is available in the latter circumstances.

3. Citation of case: Jagdish Chandra v. Punjab University.
A.I.R. 1952
Punj. 395

The High Court/The S.C.: Punjab.

The judge who delivered the majority judgment: Khosla & Harnam Singh JJ.

Brief facts and arguments:

The petitioner was apprehended while using unfair means inside the examination hall, and was debarred from examination for 3 years. He had an opportunity to put his case before the Vice-Chancellor, but no opportunity to go before the Standing Committee which conducted the enquiry.

Violation of principles of natural justice was alleged before the Court.

Summary of the decision: The Court rejected the argument on ground that an opportunity to be heard at any stage was sufficient, no personal hearing by a particular body or authority was necessary.

The action was held administrative in nature.

Remarks:

Petition dismissed.

4. Citation of case: Bijoy Ranjan v. B.C. Das Gupta
A.I.R. 1953
Cal. 289

The High Court/The S.C.: Calcutta

The Judge who delivered the majority judgment: Bose

Brief facts & arguments: The petitioner's entire examination for Intermediate Licentiate'ship Medical Certificate was cancelled on the suspicion that unfair means were used in one paper. This was done contrary to the usual practice that a candidate failing in one paper was required to appear only in that paper in a subsequent examination.

Summary of the decision: The Court held that "A sweeping decision to cancel the entire examination does not appear to have justified in the facts of this case. The candidates were entitled to have an opportunity to explain before their examination could be cancelled."

Remarks: Petition allowed.

5. Citation of case: B.C. Das Gupta v. Bijoy Ranjan
A.I.R. 1953
Cal. 212.

The High Court/The S.C.: Calcutta

The Judge who delivered
the majority judgment: K.C. Das Gupta

Brief facts and arguments: The petitioners were neither told the charges nor any opportunity was provided to be heard.

(The suspicion had arisen from the answer books.

The subject matter of the answers had tallied verbatim with that of the text book.)

Summary of the decision: K.C. Das Gupta J., in appeal from above judgment, dismissed the appeal.

For authority (the Governing Body of State Medical Faculty) acting merely in good faith was not sufficient, it should have also acted fairly and reasonably.

Further, case of each petitioner should have been considered by the Body individually.

6. Citation of case: Ghansyam Das v. Bd. of H.S. &
Int. Examination
A.I.R. 1956
All. 539

The High Court/The S.C.: Allahabad.

The Judge who delivered
the majority judgment: Agarwal.

Brief facts and arguments: The petitioners had passed the examination I.Com., but were after a few months informed that they were debarred and their results were cancelled by the Examination Committee of the Bd. as they were suspected

and found by the Committee to have used unfair means at the examination.

They were neither informed of the charges nor opportunity to be heard was afforded to them.

Summary of the decision: Brij Mohan Lall and Raghubar Dayal JJ. - agreed that under the Regulations the action of the committee was administrative, but Brij Mohan Lall J held that the observation of rules of natural justice was necessary before imposing "unreasonable restrictions on the rights of persons affected" while Raghubar Dayal J disagreed. The third Judge, His Lordship Agarwal to whom the difference of opinion was referred, agreed with Brij Mohan Lall J. that principles of natural justice should have been observed and further held that the function was quasi-judicial.

Citation of case: N.D. Vizirani v. Maharaja Sayoji Rao University
A.I.R. 1957 Bom. 246

The High Court/The S.C.: Bombay

The Judge who delivered the majority judgment: Gokhale

Brief facts and arguments: From their answer books, the candidates were detected to have copied at their examination. Accordingly their examination was cancelled and they were debarred from appearing at examination for one year. The petitioners were not allowed opportunity to explain their conduct.

Summary of the decision: The Court held that: the University Regulations did not require affording of any opportunity as claimed by the petitioners; therefore the action taken by the University was legal & valid.

Remarks: Petition dismissed.

8. Citation of case: Maya v. Basirhat College
A.I.R. 1957 Cal. 428

The High Court/The S.C.: Calcutta

The Judge who delivered
the majority judgment: Sinha J.

Brief facts and arguments: The examination of the petitioners was cancelled and they were debarred from appearing at examination for a year or two on suspicion of having used malpractices at their examination. The suspicion had arisen from the examiner's report and the sub-committee of the Examination Bd. found them guilty.

The petitioners were verbally told of the charges and no proper opportunity to defend themselves was given to them.

Summary of the decision: The Court held that under the relevant regulations it was the duty of the Bd. to consider the facts as found by the Sub-Committee and then to take the decision. It was neither the function of the Sub-Committee nor the Syndicate. The authorisation by the Board to the Sub-Committee to submit the report directly to the Syndicate, was held illegal.

Further, it was held that in the enquiry by the Examination Board into cases of discipline at examinations, the candidates must be informed of the charges against them and given the fullest opportunity to defend themselves.

Remarks: Petition allowed.

9. Citation of Case: Amolak Singh v. Punjab University

AIR 1957 Him.P.31.

The High Court/The S.C.: Himachal Pradesh

The Judge who delivered the majority judgment: Rambhadran J.C.

Brief facts and arguments: The petitioners had created a pandemonium in the examination hall as they had found their examination paper too stiff. The matter was brought to the notice of the Superintendent of the Centre and the petitioners were disqualified from appearing at examination for one year. The action was taken by the University.

It was contended that the petitioners were not provided by the University with an opportunity to be heard before the action was taken against them.

Summary of the decision : The Court found that the Regulations of the University did not require a show cause notice to be issued before an action could be taken; therefore upheld the action taken by the University.

Remarks: Petition rejected.

10. Citation of Case : Sonpal Gupta v. University of Allahabad

AIR 1958 All.792.

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment: J.K. Tandon

Brief facts and arguments : The petitioner was caught while copying from a cheat at his examination. He refused to give his explanation to the invigilator who reported the matter to the University. The Vice-Chancellor in consideration of the examiner's report also, debarred

the petitioner from appearing at examination for one year. The Vice-Chancellor did not give any opportunity to the petitioner to be heard.

Summary of the decision : The Court held that, though the order was administrative in nature but for its grave consequence affecting the future career of the student, the natural justice demanded that the Vice-Chancellor should have heard the petitioner before passing the orders.

Further, merely asking for his explanation without telling him what were the reports against him and without telling him the nature of the explanation required of him, did not meet the requirements of natural justice.

Remarks : Petition allowed.

1. Citation of Case : Hakim Rai v. University of Punjab AIR 1958 H.P.8.

The High Court/The S.C. : Himachal Pradesh

The Judge who delivered the majority judgment : Ramachandran J.C.

Brief facts and arguments: The petitioner had appeared at a language test and the University authorities came to the conclusion that unfair means were used by him, consequently he was disqualified for four years.

He challenged the finding by the University and contended that he was not guilty of cheating.

Summary of the decision : The Court held that in summary proceedings like the writ proceeding the question as to whether the petitioner cheated or not could not be gone into.

Further, under the proceedings the Judicial Commissioner's Court could not interfere with the decision arrived at by the University in the exercise of the powers under the Regulations.

Remarks : Petition dismissed.

12. Citation of Case : Bd. of H.S. & Int. Ed. v.

Ram Krishna AIR 1959 All. 226

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment: R.N. Gutru

Brief facts and arguments : The appellants, in a written petition to the H.C. were held to have made much delay in declaring the result of the petitioner withheld by them. The Court had ordered them to declare the result within 2 days.

Summary of the decision : In the appeal-judgment it was held that by issuing the order (mandamus) the High Court was not justified in taking the matter out of the hands of the Examination's Committee (which had not been able to complete its inquiry) and in dealing with the facts and coming to a conclusion on material which appeared to be scanty and quite insufficient.

Remarks: Appeal allowed.

13. Citation of Case : Uma Shankar Singh v. State of Bihar AIR 1959 Pat.224.

The High Court/The S.C.: Patna.

The Judge who delivered the majority judgment: Ramaswamy C.J. & R.K. Chaudhary J.

Brief facts and arguments: The petitioner was debarred from appearing at any examination for two years as he was found guilty by the Bihar School Examination Board guilty of using unfairmeans.

Summary of the decision : The Court held that the Board while punishing candidates for their misconduct at examination under section 6 of the Bihar Act of 1952, was acting as an administrative body. There was no lis between the parties, hence the principle of audi alteram partem did not apply. Further, the Board was not bound to give notice of its findings to the petitioner before awarding the punishment.

The H.C. could interfere had the Board acted arbitrarily, capriciously, malafide or from any extraneous consideration.

Re-remarks: Application dismissed.

14. Citation of Case : Shiv Vikas v. Allahabad University AIR 1960 All.196

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment: B.R. James

Brief facts and arguments : The petitioner was apprehended while using unfairmeans at his

LL.B.(Prev) Examination. His result was cancelled and he was debarred from appearing at examination. The invigilator after preliminary enquiries had recorded his replies on a typed sheet of paper.

Summary of the decision : It was held that rules of natural justice merely requires that no one will be condemned unheard. In cases of use of unfair means it is not necessary for the "University or the Executive Council to question the offending examinee. It is sufficient if the University's agent or delegate on the spot has given him reasonable opportunity to explain his position. In such a case no rule of natural justice which enjoins a procedure like that laid down, in Art. 311 of the Constitution, namely that there should be two show cause notices to the offender, one against the charges against him and the other against the punishment proposed. It is also not necessary that the authority which awards punishment should issue the show-cause notice, it is sufficient that the authority should apply its mind to the explanation furnished to the agent or the delegate.

Remarks : Petition dismissed.

Citation of Case : Calcutta Singh v. Registrar,
B.H.U. AIR 1960 All. 531.

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment : S.P. Srivastava

Brief facts and arguments: The petitioner appellant was apprehended with a written piece of paper in examination hall. The invigilator and the Superintendent wrote their report on a typed paper and the petitioner after perusing it wrote his explanation. The Academic Council, without taking into consideration any material taken behind the back of the examinee, and after considering the report passed a resolution rusticating the examinee for one year.

Summary of the decision: It was held that the Academic Council was acting as a disciplinary body than an administrative one. It was not acting judic ially or quasi-judicially. No statutes or regulations were there to require, before imposing a penalty to hold proper enquiry including opportunities to cross-examine and produce evidence before the body awarding the punishment.

Remarks: Appeal dismissed.

16. Citation of Case: Calcutta Singh v. B.H.U. AIR

1960 All. 642.

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment : D.S. Mathur

Brief facts and arguments: The petitioner contended that a regular charge was not framed against him and that he was not given opportunity to cross-examine the invigilator and the Superintendent and to produce his own evidence.

Summary of the decision : The only thing that the examinee can expect is that the Council should act in a fair and above board manner and should observe the ordinary rules of fair play. The requirement of natural justice in a case of this kind can only be that the person concerned should know the nature of the accusation against him, that he should be given an opportunity to state his case and that the tribunal should be acting in good faith.

Remarks: Petition dismissed.

17. Citation of cases : Sect. Bd. of H.S. & Int.

examination U.P. v. Virpal Singh
AIR 1960 All. 535.

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment : R.N. Gurtu

Brief facts and arguments : The respondent petitioner had challenged in his petition the legality of the Board's order cancelling his examination in which he was found guilty of using unfair means and debarring him from appearing at examination in subsequent year. At a later stage he pressed to challenge the legality of the second part of the order.

The single judge of the H.C. had allowed his petition. This appeal was preferred by the Board against the single judge judgment.

Summary of the decision: The Court held that under the Regulations (1) Sub-C1(4) made under the U.P. Intermediate Education Act 1921, Ss 7,15 the

Board was legal ly authorised to exclude an examinee from subsequent examination.

Rema-rks: Appeal allowed

18. Citation of cases : Washin Ahmed v. Sec. Bd. of
H.S. & Int. Exam. AIR 1961
All. 290.

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment : V.D. Bhargava J.

Brief facts and arguments : Copying of answers on large scale was detected from answer books checked by the examiner and was reported to the Board.

The petitionwrs were asked by the Enquiry Committee which visited the centres to answer questions put by it.

The petitioners contended that they were not given proper opportunity to meet the charges.

Further, that the Board was not authorised to punish them as no definition of 'misconduct' was given in any of the rules of the Regulations and therefore it was hit by Art.14 of the Constitution as its interpretation would depend on the vagaries of the Enquiry Committee or the Examiners.

Summary of the decision : The Court showed its reluctance to interfere with administrative and disciplinary jurisdiction of educational and autonomous bodies until there has been a 'a blatant deviation of any law'.

The Court was satisfied with the opportunity given to the petitioners.

Further, the Court observed "there will be some acts which will always be mis-conduct and by no reasonable and prudent man can they be considered anything else, but a misconduct."

"...Copying in examination has never been considered to be an honest and gentlemenly conduct and it would always be called a misconduct..."

(Action of the Board on this ground cannot be called to be an arbitrary one.)

Remarks: Petition dismissed.

19. Citation of Cases : Mukund Madhav v. Agra University
AIR, 1961 All. 6301.

The High Court/The S.C.: Allahabad

The Judge who delivered the majority judgment : V.D. Bhargava J.

Brief facts and arguments: The petitioner was charged with manipulation of marks in Examination Record.

On that ground his examination was cancelled, the awarded degree was ordered to be withdrawn, and he was debarred from appearing at examination.

Summary of the decision : The letter informing the petitioner of his misconduct and his reply to it bearing his explanation were held by the Court proper compliance by the authorities of the rules of natural justice to the extent they could do in discharge of their administrative and disciplinary duties.

The Ex-Council had exercised its power well within its jurisdiction when it passed by an resolution a temporary Ordinance enforcing the punishment. The ordinance actually did not create a new offence but only created a punishment.

Further whether the evidence would be enough in a court of law or whether on that evidence the Court would be prepared to pass the order, is a matter which cannot be considered in a writ petition. Had there been no evidence the matter would have stood on a different footing.

Remarks: Petition dismissed.

20. Citation of Case : Jagannadha Rao v. Secy. S.E.

Board AIR 1961 A.P. 46.

The High Court/The S.C.: Andhra Pradesh

The Judge who delivered the majority judgment : Seshachalapati, J.

Brief facts and arguments : On charge of copying from each other, the petitioner and another candidate were debarred from appearing at examination for one year and their results were also cancelled.

The enquiry was conducted by the Mal-practice Committee and the Commissioner of Govt. Examinations A.P. The boys were informed of the charges by the Headmaster of their institution and he also took their explanation to forward the same to the Commissioner.

The petitioner contended that proper opportunity to be heard was not afforded to him.

Summary of the decision : The Court observed that, where no rules of procedure are prescribed, mere observance of the rule of audi alteram partem in that letting a man know charges against himself and have an opportunity to meet them, is sufficient.

The Court held there was no violation of the rule in this case.

Remarks: Petition dismissed.

21. Citation of Case : Pyare Lal v. University of
Saugor AIR 1961 M.P. 356.

The High Court/The S.C.: Madhya Pradesh.

The Judge who delivered the majority judgment : P.V. Dixit, C.J.

Brief facts and arguments: The petitioner was one of those examinees who were reported by the invigilator to have used unfair means at LL.B. (Prev) Examination of the University, held at Raipur Centre.

They were declared successful at the examination but a later action their examination and results were cancelled and they were debarred from appearing at examination for one year.

With his report the invigilator had forwarded to the University the material collected from the candidate along with their signed statements. No other opportunity to explain their conduct was provided by the authorities.

Summary of the decision : The Court observed that, no doubt the University was negligent in letting the results of the reported candidate published when

their misconduct was already notified to it, he yet it did not mean that the University could not take any action thereafter.

The word "disqualify" means imposing a legal incapacity on a person. When a candidate has been disqualified to pass the examination, he has lost the legal capacity to pass it. He may de-facto pass the examination, but if he is disqualified he is legally incompetent to pass the examination.

The Court was satisfied with the opportunity given to the petitioners by the invigilator to explain their conduct. No further opportunity was held to be necessary to give.

Further, when the exercise of an administrative act is left by the legislature to the subjective satisfaction of the authority, the Court would not interfere till the action taken has "a national probative value and are not extraneous to the scope or purpose of the relevant provision.

Remarks: Petition dismissed.

22. Citation of case : L. Nagraj v. University of Mysore

AIR 1961 Mys. 164.

The High Court/The S.C.: Mysore

The Judge who delivered the majority judgment : Narayana Pai.

Brief facts and arguments : The petitioner was suspected to have copied his answers from a text book of Chemistry. At the enquiry he deposed that he had learnt by heart some parts of the book. Some more questions were also put to him and he

was subjected to a sort of memory test.

Summary of the decision : The Court held that the petitioner was not afforded "full and fair opportunity to defend himself and offer explanation."

The Court observed : "The long line of questioning to test the memory powers of the candidate without telling him why he was being subjected to such severe test is, in our opinion, a negation of the idea of justice."

Remarks : Petition allowed.

23. Citation of Case: Mashhood Ali v. Secy. Sec. Ed.

A.P. AIR 1962 A.P.187.

The High Court/The S.C.: Andhra Pradesh

The Judge who delivered the majority judgment : Basi Reddy

Brief facts and arguments : The petitioners were charged for copying from others or letting others to copy from their answers in different papers.

Summary of the decision : The Court held that the Select Mal-practise Committee and the Commissioner for Government Examinations while conducting enquiries into cases of alleged mal-practices at examinations were acting quasi-judicially and not merely administratively.

Further, in not letting the candidates know in exactly what subjects and in what answers they had copied or allowed others to copy, they were asked to answer vague and indefinite charges. To which their explanations were bare denials.

The petitioners, it was held, were neither adequately informed of the charges, nor they were given adequate opportunity of meeting the charges.

Remarks: Petition allowed.

24. Citation of case : Bd. of H.S. Ed. U.P. v. Ghanshyam
AIR 1962 S.C. 1110.

The High Court/The S.C.: S.C.

The Judge who delivered the majority judgment : K.N. Wanchoo, J.

Brief facts and arguments: Please refer to Case No.6
supra.

The result of the petitioner-respondents was cancelled and they were debarred from appearing at examination without charges being made known to them or any opportunity to be heard being afforded.

The H.C. of Allahabad had held the observance of the principles of natural justice as necessary on the part of the Board before it took the action.

The Board had come in appeal to the Supreme Court on grounds that the observance of rules of natural justice was not necessary for it, it being an administrative body and in the case had acted in that capacity. Further, that there was no provision in the Statute or Rules under which the Board acted which might be interpreted to require its action in quasi-judicial capacity.

Summary of Decision : The Supreme Court observed that even in absence of an express provision in the statute, it could be inferred from the nature of the rights affected, the manner of the disposal provided, the

objective criterion if any to be adopted, the effort of the decision on the person affected and other indicia afforded by the Statute, whether the body was required to act judicially or not.

It was held, that in the case under consideration, the Board was acting quasi-judicially and it should have observed rules of natural justice.

Remarks: Appeal dismissed.

25. Citation of Case : Anmol Singh v. Osmania University

AIR 1963 A.P. 83.

The High Court/The S.C.: Andhra Pradesh.

The Judge who delivered Seshachelapati, J.

THE majority judgment :

Brief facts and arguments : The petitioner was rusticated for two years for using unfair means at examination. The Board of Examiners conducted the enquiry. He was informed with specific charges against him and was called upon to explain but he filed a very long written statement and declined to answer any question. Thereupon the Vice-Chancellor after duly considering the explanation together with the statement passed the order.

The petitioner contended that he was not given opportunity to examine the witnesses on whose statement the University relied.

Summary of the decision : The Court held that in absence of any prescribed procedure the Vice-Chancellor was free to adopt any procedure for the enquiry which would have enabled him fairly to determine his action and pass the orders.

There was no obligation on the university to allow the petitioner to cross-examine the witnesses.

There was no violation of natural justice.

Under Art. 226 the High Court would not go into question of facts and review evidence to come to its own conclusion of facts.

Remarks : Petition dismissed.

26. Citation of Case : Ramachandra v. Punjab University

AIR 1963 Punj. 480.

The High Court/The S.C. : Punjab.

The Judge who delivered the majority judgment : Harbans Singh J.

Brief facts and arguments : The petitioner (who was a teacher candidate) examination was cancelled and he was debarred by the University on the basis of the report of alleged use of unfair means, sent by the Centre Superintendent along with the replies of the petitioner given to the Superintendent. The petitioner's integrity and character were though assured by the Headmaster of his School yet the Superintendent had not allowed the petitioner to complete his examination. The petitioner had written a letter to the Registrar that he was being victimised by the Superintendent because of some political rivalry and he would like to submit some proofs and facts in support of his statement. But he was provided with no opportunity - before the action was taken and the order against him passed.

Summary of the Decision : The Court, following the S.C. (1962 AIR 1110) decision held the act of the Unfair Means Committee as quasi-judicial.

It was further held, that no adequate opportunity was provided to the petitioner. He should have been told of the exact allegations made against him by the Superintendent and an opportunity to show cause against the proposed action be given to him.

The order was quashed.

Remarks: Petition allowed.

27. Citation of Case : Ajit Singh V. Ranchi University.

AIR 1964 Pat. 291.

The High Court/The S.C.: Patna.

The Judge who delivered the majority judgment : V. Ramaswami C.J. & R.K. Choudhary J.

Brief facts and arguments : The petitioners were debarred from appearing at any University examination for periods noted in the Order against each of them.

During the enquiry conducted by the Unfair Means Scrutiny Committee, to the petitioners in spite of their request the basis and materials upon which the allegations were based were not disclosed.

Summary of the Decision : The Court relied on the Supreme Court decision (AIR 1962 S.C. 1110) and held that the Syndicate was acting in quasi-judicial capacity and should have followed principles of natural justice.

The petitioners should have been supplied with the material upon which the allegations for using unfair means were based. A more effective opportunity to defend their case should have been given to them.

28. Citation of Case : E.V. Kumar v. University of Madras

AIR 1964 Mad. 460.

The High Court/The S.C. : Madras.

The Judge who delivered the majority judgment : Ramkrishnan, J.

Brief facts and arguments : The two petitioner-appellants were charged for using mal-practices in their Mathematics Paper I. The use of mal-practice was detected by the Examiner on finding few answers in the answer books of each petitioner telling verbatim. The University notified the suspicion to the petitioners and asked them to explain within a week why disciplinary action be not taken against them.

The petitioners explained their positions in the examination hall with a view of physical impossibility of any copying. One petitioner explained that he was short sighted. The other petitioner explained that his subject was well prepared and he was in no need to copy from anyone and neither he has allowed anyone to copy from him.

However, the Disciplinary Committee of the Syndicate found both the candidates guilty and recommended that they should be debarred from appearing at next two University examinations and also that their results of the examination be cancelled.

The Judge of High Court who had heard their petition, found that the charges could have been more specifically framed, but concluded that the principles of natural justice were duly complied and adequate and reasonable opportunity was given to the petitioner. He confirmed the order of the University and rejected the petition.

The present appeal was filed against the above judgment of the Singh Judge.

Summary of the Decision : The Court held that the candidates in both the cases have suffered a serious prejudice, because of the vagueness of the charges, and the absence of a proper enquiry directed for the purpose of separating the innocent from the guilty out of the two candidates subjected to punishment. The charge framed is so defective that no proper opportunity should be deemed to have been given to the candidates to meet it. The word mal-practice is a term of general import and requires to be more clearly specified. The charge framed does make an attempt at specification by describing the mal-practice as "word for word reproduction of the answers of another candidate".....As in an examination necessarily implied that there was already in written answer paper of some other candidate, which the delinquent candidate copied the University authorities ought to have made an adequate preliminary enquiry into all circumstances implied in the charge of copying before framing the charges.

As disciplinary actions involve grave consequences to the candidates, the enquiry by the University authorities was expected to be more circumspect and fuller than what was actually indicated by the charge framed.

For violation of principles of natural justice the order was consequently quashed.

Remarks : Appeal and petition allowed.

EXAMINATION PAPERS - LEAKAGE OF

1. Citation of case: S.K. Ghosh v. Vice-Chancellor,
Utkal University A.I.R. 1952
Orissa 1.

The High Court/The S.C. Orissa

The Judge who delivered the majority judgment Narasimham J.

Brief facts and arguments

The Syndicate of the Utkal University instead of approving and publishing the result of the First M.B.B.S. Examination as submitted by the Board of Examiners, passed a resolution on cancelling the result and fixing a new date for re-examination in the subject of Anatomy. The Syndicate had found that there had been a leakage of questions in Anatomy.

The resolution was challenged on grounds that (1) due notice of the consideration of the subject was not given to all the members of the Syndicate as required by the Standing Order No.4 of the Rules of Business of the Syndicate itself, (2) the Syndicate acted arbitrarily and without due care in passing such a resolution on wholly inadequate materials available before it.

The objections against the petition were

1) Writ of mandamus cannot be issued against an autonomous body like the Syndicate.

2) Until their results were declared the petitioners have no enforceable rights for which mandamus may be issued.

3) The petitioners had an alternative equally convenient and effective remedy by way of petition to the Chancellor.

Summary of the decision

The Court held that

1) The Syndicate was a statutory body and a public body, therefore it was amenable to the writ jurisdiction of the High Court under Art. 226 of the Constitution.

2) When Board of Examiners had prepared and submitted the result for approval to the Syndicate, petitioners' right had come into existence though it would be a complete right only on publication of the result by the Syndicate. But, mandamus could be issued for an incomplete right also.

3) The petitioners had tried the alternative remedy without any consequence, therefore the only remedy left with them was to approach the Court.

4) "Failure to comply with any prescribed rules as to notice will invalidate the meeting and the business transacted there at unless it is not reasonably practicable to summon a particular person by reason of his address being unknown or his being out of reach"

When a meeting is for the discharge of a public duty it is not competent for any person to waive it.

The duration of the notice as required in the Standing Order No.4 should also have been strictly construed and observed.

5) In adopting the resolution the Syndicate had acted with undue haste, assumed the existence of certain facts which did not exist, ignored certain papers that were before them and were carried away by the hearsay statement. Thus the resolution was passed

unreasonably and without due care.

Remarks

Petition allowed and the writ issued to publish the result.

2. <u>Citation of case:</u>	Vice Chancellor v. S.K. Ghosh ...I.R. 1954 S.C. 217
<u>The High Court/The S.C.</u>	S.C.
<u>The Judge who delivered the majority judgment</u>	Bose J. (Mahajan C.J., B.K. Mukherjea, S.R. Das & Ghulam Hasan JJ.)

Brief facts and arguments

The ordinary meeting of the University Syndicate had been called to consider certain matters. The question of the leakage of a question paper of certain examination was not on the agenda but the last item was, "other matters, if any." The Vice-Chancellor who presided over the meeting put the question before the Committee. After carefully considering the question the member present unanimously passed a resolution that they were satisfied that there was leakage of examination paper, the examination in that particular subject be cancelled and that there should be a re-examination in the subject. The Syndicate consisted of 12 members. In the meeting there was one absentee. The absentee member was not told that the question of leakage would be one of the matters to be considered at the meeting. Some days afterwards another meeting was called. This time also the question of reconsideration of the previous decision was not on the agenda. But the Vice-Chancellor brought the question before the meeting suo moto. This time also only 11 members were present but the absentee member was not

the same person who was absent in the first meeting.

By unanimous resolution the members refused to review its previous decision.

Summary of the decision

The Court held that

1) The strict observance of the prescribed requirements of a notice should be made when it is so desired by the incorporating Constitution of a legal entity (the University), and any omission to give proper notice would invalidate the meeting and the resolutions which purported to have been passed by it. But the position is different when either by custom or by the nature of the body or by its constitution and rules, greater latitude and flexibility are permissible". Each case must be governed by its own facts and no Universal rule can be laid down....The substance is more important than the form and if there is a substance of the law, an unessential defect in form will not be allowed to defeat what is otherwise a proper and valid resolution."

"The two resolutions were not invalid and that whatever might be thought about each taken separately, the defects if any, were cured when the two were read together and regarded as a whole."

"It was not the function of the Court of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question was entrusted by the law. The University authorities acted honestly as reasonable and responsible men confronted and with an urgent situation were entitled to act. This was decidedly not the sort of case in which a mandamus ought to issue."

Remarks

The H.C.'s order was set aside, however, the Vice-Chancellor had given an undertaking that the students who were, as result of the H.C.'s Order, allowed to study in higher classes on the basis of the result submitted by the Bd. of Examiners at that time, would be deemed to have passed that first M.B.B.S. Examination and would not be required to appear again in Anatomy. Appeal allowed.

3. Citation of case: H. Chandra v.
University A.I.R. 1963
Pat. 295.

The High Court/The S.C. Bihar

The Judge who delivered
the majority judgment V. Rama Swami C.J. &
N.L. Untwalia J.

Brief facts and arguments

The Vice-Chancellor had issued the order to cancel B.A. & B.Sc. Mathematics (Honours) annual examination because of leakage of examination papers and ordered a fresh examination on a future date.

It was contended that the Vice-Chancellor had no powers to issue the Order to cancel the Examination and hold examinations afresh.

It was contended on behalf of the respondents that the petitioner (the elder brother of the student whose examination was affected by the order) was not competent to file the petition as there was no question of legal guardianship of his brother who was aged 20 years.

Summary of the decision

The Court held that

In view of the statement in the counter affidavit

the Court was satisfied that the petitioner's brother was 20 years of age and no question of legal guardianship arose. Therefore, the petitioner had no legal interest which might entitle him to make the application for a writ under Art. 226 of the Constitution on behalf of his brother. The right enforceable under Art. 226 must be a right of the petitioner himself, (except the possible relaxation of the rule in cases of habeas corpus or quo warranto).

Further, under the statutory provisions the Vice-Chancellor had the power to order cancellation of an examination and to hold afresh an examination.

The Court also held that the Vice-Chancellor's action was neither arbitrary nor mala fide, nor against the principles of natural justice. The action was taken with observance of due procedure and proper inquiry.

Remarks:

Petition dismissed.

INDUSTRIAL DISPUTE ACTS AND THEIR
APPLICATION TO EDUCATIONAL INSTITUTIONS

1. Citation of Case: University of Delhi v. Ram Nath
A.I.R. 1963
S.C. 1973
- The High Court/The S.C. S.C.
- The Judge who delivered
the majority judgment: P.B. Gajendragadkar J.
(K.N. Wanchoo & K.C. Das Gupta JJ)

Brief facts and arguments:

The two respondent petitioners who were employed by the appellant University to drive College Buses, were turned out of the service as the same were no more needed.

The petitioner had gone to the Industrial Tribunal on grounds that the termination of their services came under the Industrial Disputes Act. That their services were terminated without any notice in advance. The Industrial Tribunal had declared awards against the University.

It was contended on behalf of the University that the University is not an Industry as such the Industrial Disputes Act does not apply to it.

Summary of the decision:

The Court considered the problem thus:

If the University is an Industry,

(1) Is the cooperation between teachers and the University of same nature as that of labourers with their Industry?

(2) Do teachers come under the definition of "workmen" as provided by S.2(s) of the Industrial Disputes Act?

(3) Do the essential activities (imparting education academic, technical and professional, disciplining and building character of students) bring the University under the Act?

The Court held that answers to all these powers are in negative. Hence the University is not an Industry and the jurisdiction of Industrial Tribunal under the Industrial Tribunal Act did not apply it.

Remarks:

The appeal was allowed.

2. Citation of Case:

B.S.E. Society v. W.B.C.E.

Association

A.I.R. 1964

Calcutta 49

The High Court/The S.C.

Calcutta

The Judge who delivered the majority judgment:

B.N. Banerjee

Brief facts and arguments:

Brahmo Samaj Education Society and some other educational societies had filed a petition against the award made by the Industrial Tribunal to the W.B. C.E. Association. The award was for an increase in salaries, providing facilities of house allowance, provident fund, etc. to the workers. The Association had claimed that the non-teaching staff of the Colleges were entitled to the award.

In support to consider the Societies and Colleges run by them as Industry it was contended on behalf of

of the respondents that the activities of maintaining canteens and hostels, and printing and publishing literary material were in the nature of industrial undertakings.

Summary of the Decision:

The Court looked at the essential functions of the Societies and Colleges and observed that.

The activities of the societies and colleges run by them to develop academic and personality standards of the students. These activities cannot be called industrial. They are essentially different from the nature of the purpose for which industries are run.

Maintaining of canteen, hostels, laboratory-workshops and printing and publishing educational materials are incidental and auxiliary to the main function of educational institutions.

Thus the award of Industrial tribunal does not apply to non-teaching staff of the Societies.

Remarks

Petition allowed.

Master and Servant Cases of Educational Institutions

1. Citation of the Case: Andhra University v. Durga Lakshmi Manoharan. A.I.R. 1951. 1951. Madras. 870.

High Court or Supreme Court: Madras H.C.

Judge who delivered the majority Judgement. Raghava Rao. J.

Facts & Arguments:

The question involved was whether a servant of a University held his office at the 'pleasure' of the Syndicate. It was contended on behalf of the University on the basis of Chellam Aiyar v. Corpn. of Madras (A.I.R. 1918. Mad. 710) which held that servants of statutory Corpn. like the Madras City Corporation held office during pleasure that officers of the University also held their offices at the pleasure of the Syndicate.

Decision:

No English or Indian authority had extended the rule of office being held during pleasure beyond offices under the Crown and offices under local authorities to offices under a University or such authority. Such a view would, however, high the legitimate place of honour which a statutory body like the University ought to enjoy in the public life of the country, not only exalt it to a higher place than is warranted by needlessly assimilating it to a governmental authority or a body connected with Local Self Government.

Remarks: Petition dismissed.

2. Citation of the Case: Sarangapani Naidu v.
Kalyana Sundram High
School A.I.R. 1957
Madras. 561.

High Court or Supreme
Court: Madras H.C.

Judge who delivered the
majority Judgement. Rajamannar C.J.

Facts & Arguments:

The management of a School dismissed the Head Master of the School on some charges but did not provide him an opportunity to explain his case. The Director of Public Instruction to whom the matter was represented annulled the management's order.

Decision:

Once charges were framed against a teacher the management had to necessarily comply with the procedure laid down. It could not frame charges and dismiss the teacher without giving him an opportunity to make a representation against it.

Remarks: Petition upheld.

3. Citation of the Case: Govind Ram Sharma v. State of
U.P. A.I.R. 1957. Allahabad.
737.

High Court or Supreme
Court: Allahabad H.C.

Judge who delivered the
majority Judgement. Moothan C.J.

Facts & Arguments:

In a writ petition under Art. 226 of the Constitution the petitioner, a dismissed teacher of a management school contended that an arbitration board which had given an award in the dispute between himself and the management had been wrongly constituted and therefore the award was void.

Decision:

A breach of a contract under which an arbitration board had to be constituted under a certain procedure could not be gone into in a writ petition under Art. 226. The question whether they had been a breach of the terms of the appellant's agreement was a dispute of a contractual nature and the Court would not entertain disputes of such a character in the exercise of its jurisdiction under Art. 226 of the Constitution.

4. Citation of the Case:

Thiruvengadam v. Indian Institute of Science A.I.R. 1954 Mysore. 158.

High Court or Supreme Court:

Mysore H.C.

Judge who delivered the majority judgement.

Vasudevanurthy J.

Facts & Arguments:

An employee of the Indian Institute of Science sent in his resignation and did not hear anything from the authorities accepting his resignation for some time. He then sought to withdraw his resignation but this was not allowed by the authorities.

Decision:

In the absence of statutory regulations with regard to the employment of personnel in the Institute it was the terms of the contract of employment which governed the respective rights and duties of the parties and in the instant case a resignation did not have to be 'accepted' to give it a character of inevitability. And again such a dispute could not be the subject of investigation under a petition under Art. 226.

Remarks:

Petition dismissed.

5. Citation of the Case: Ram Dulari v. Inspectress
of Schools. A.I.R. 1961
Allahabad. 64.

High Court or Supreme
Court: Allahabad H.C.

Judge who delivered the
majority Judgement: Mootham C.J.

Facts & Arguments:

A temporary teacher in a Government school was given notice by the authorities that her services had been terminated without any reference to an enquiry conducted into her conduct which was conducted by the educational authorities. Just before the order of terminations had been passed. It was contended on the basis of Arts. 310 and 311 of the Constitution that she should have been offered an opportunity to represent her case before the order was passed.

Decision:

The three Supreme Court decisions relied on by the petitioner, viz., Parashotham Lal Dhingra v. Union of India (A.I.R. 1958 S.C. 36), State of Bihar v. Gopi Kishore Prasad (A.I.R. 1960 S.C. 639) Balakotiah v. Union of India (A.I.R. 1958 S.C. 232) did not involve the present question. It was always open to the Government to drop an enquiry against an official and to drop an official and to terminate his services in accordance with his contract of service. The holding of an enquiry would not effect or modify the substantive rights and obligations of the Government and the official under the law of master and servant.

6. Citation of the Case: Ghulam H. Khan. v.
State of U.P. A.I.R. 1962.
Allahabad. 413.

High Court or Supreme
Court: Allahabad H.C.

Judge who delivered the
majority Judgement: B. Mukerji J.

Facts & Arguments.

The petitioner, a dismissed clerk in the U.P. Board of High School & Intermediate Examination contended that the Board created by the Intermediate Education Act, 1921 was a corporate authority and therefore he could not be considered a civil servant holding the office at the pleasure of the Government under Art. 310..

Decision:

There was no inherent impossibility in a statutory authority being at the same time a department of Government unless the Act itself which created the authority gave it a separate legal status i.e., provided it with the right of perpetual succession, a common seal and the right to sue and be sued in its name. The Board had always been treated as a department of Government for instance, the appointment of the staff from the very inception of the Board were made by the Government the appointment, transfer, suspension and removal were always by the Government and the budget was made by the Government. Therefore the contention that the petitioner was an employee of a corporate body and not a civil servant was without substance.

Remarks:

Petition dismissed.

7. Citation of the Case:

Babu Lal. v. Principal,
Govt. Engineering College.
A.I.R. 1960. M.P. 294.

High Court or the
Supreme Court:

Madhya Pradesh H.C.

Judge who delivered
the majority judgement:

K.L. Pandey J.

Facts & Arguments:

The petitioner, a laboratory attendant in a Govt.

Engineering College was given an order which accused him as negligent and undesirable and his services were subsequently dispensed with. He contended that this amounted to punishment and since no opportunity for him to make a representation was given under Art. 311(2) of the Constitution the proceeding was void.

Decision:

Relying on the Dhingra decision (A.I.R.1958. S.C. 36) the Court held: "if the termination is founded upon misconduct, negligence, inefficiency or other disqualification attributed to the servant, it is punishment attracting the protection afforded by Art. 311. If termination is founded on misconduct or inefficiency or other similar reason and there is no proper enquiry, it amounts to removal within the meaning of Art. 311(2) and is liable to be struck down. If there is no enquiry at all, we do not see why the protection afforded by Art. 311(2) should not be available. In our opinion, in considering whether or not the termination of service of a temporary servant amounts to punishment and removal within the meaning of Art. 311(2), we have to look to the language of the order passed and to find out whether the termination was founded on misconduct or negligence. In the instant case, the order impugned before us shows that the petitioner was found to be utterly negligent in the discharge of his duties, with the result that there were repeated thefts of laboratories looked after by him. Under the circumstances he was not considered to be a desirable person fit to be continued in Government service... In our opinion, the order which makes no reference to the

contract or the nature of tenure of the petitioner's service is founded on his neglect of duty and defect of his character. We are of the view that it is a punishment amounting to removal for service which could not be inflicted on him in disregard of the protection afforded to him by Art. 311(2). That being so, the order must be struck down as one passed in violation of Art. 311(2).

Remarks:

Petition dismissed.

8. Citation of the Case:

Kamalakar v. Principal,
Training College A.I.R.
1960 Bombay.9.

High Court or Supreme Court:

Bombay H.C.

The Judge who delivered the majority judgment.

Dixit J.

Facts & Arguments:

The petitioner, a temporary clerk in a teachers' Training College run by the Government was discharged from service after he had admitted that he had committed an act of forgery. He contended that the discharge was in effect a dismissal and since in the case of an order of dismissal of a government servant it could not be carried out without compliance of the provisions of Art. 311(2) his order of discharge was void.

Decision:

In judging the question whether or not an order of discharge is accompanied by punishment one must look to the language of the order of discharge. On the language of the order of discharge no penal consequence is imposed upon the petitioner. The contention of the petitioner therefore that the notice of discharge amounted to a notice

of dismissal could not be accepted. So long as the authorities do not make an order of discharge for misconduct but merely exercises their right to terminate the services it is not open to the employee to complain that the authorities cannot terminate his services and that the termination is by way of punishment.

Remarks: Petition dismissed.

9. Citation of the Case: Biswaranjan Bose & others
v. Hon. Secretary, R.K.
Mission, Vivekanand Society,
Jamshedpur. A.I.R. 1958 Patna.
653.

High Court or Supreme Court: Patna H.C.

The Judge who delivered the majority Judgement: R.K. Choudhary J.

Facts & Arguments:

Four teachers of a school run by the respondents contended that the termination of their services without giving them any opportunity of hearing or without calling upon them to show cause as to why their services should not be terminated was violative of Art. 311(2).

Decision:

It is an undisputed fact that the petitioners entered into their services under agreements. The terms of agreements recite that it may be terminated at any time by either party, on giving to the other party one month's notice in writing of their intention to terminate the same, or by paying one month's salary in lieu of such notice, provided that the said school authority should be entitled to terminate the service without notice in the event of gross misconduct. The appointment having been made on a contract, the parties were bound by the terms of the contract, and if the contract

permitted the managing committee to terminate the services of the petitioners without any notice, there was nothing wrong with the orders passed by the Managing Committee terminating the services of the petitioners. Art. 311(2) does not apply to a case where the services of a person have been terminated in terms of the contract of service.

Remarks:

Appeal dismissed.

10. Citation of the Case:

Registrar, University of Jammu & Kashmir, v. Khan Ghulam Mohammed Illogaband, A.I.R. 1960 Jammu & Kashmir 80.

High Court or Supreme Court:

J & K H.C.

The Judge who delivered the majority Judgement:

J.N. Wazir C.J.

Facts & Arguments:

The petitioner respondent, a Head clerk in the Jammu & Kashmir University was given a charge sheet by the Registrar of the University accusing him of certain mal practices with regard to the SSLC examination conducted by the University. In spite of repeated chances offered to him to defend his case the petitioner-respondent refused to put up a defence and ultimately the Registrar issued an order dismissing him from service. A single judge of the High Court who heard his petition held that it was manifest from the Registrar issued an order dismissing him from service. A single judge of the High Court who heard his petition held that it was manifest from the Registrar's letter that he had made up his mind to dismiss the petitioner irrespective of whether he was able to give his defence or not and that the enquiry had been completed even without affording an

opportunity to the petitioner to produce his defence. The University came in appeal against this judgement and the petitioner-respondent contended that the University's order of dismissal had violated principles of natural justice.

Decision:

"In the instant case the Registrar had to function not exactly as a Court of law but in a fair and just manner; that he should have no personal interest or bias against the respondent and he should have given a fair opportunity to the respondent and he should have given a fair opportunity to the respondent proceeded against, to place his case before him. In spite of several opportunities the respondent did not produce any evidence to displace the allegations made against him and in these circumstances the Registrar had no option but to confirm the action of dismissal which was proposed to be taken against him. The respondent had been found guilty of gross misconduct by tampering with the result of the Matriculation Examination which badly reflected on the fair name of the University and the punishment of dismissal awarded to him was, in these circumstances fair and just. For the afore mentioned reasons the judgment under appeal is erroneous and must be set aside.."

Remarks: Appeal upheld.

11. Citation of the Case: Ramaswamy Ayyangar.
v. State of Madras A.I.R.
1962 Mad. 387.

High Court or Supreme Court: Madras H.C.

The Judge who delivered the majority judgement: Anantanarayanan J.

Facts & Arguments:

The petitioner was a Head Master of a school against whom certain charges were framed by the school management on disciplinary grounds and he was asked to submit an explanation to them before a specified period. The petitioner requested for additional time which was refused and finally the management gave the petitioner notice for 3 months and terminated his services, apparently holding the charges proved in the absence of any satisfactory or adequate explanation. The petitioner's contention was that some of the provisos to the rule such as giving him a fair hearing or approval of the dismissal by higher governmental authorities had not been substantially complied with.

Decision:

The terms of the contract between the teachers and the management are not enlarged or qualified by the rules as claimed by the petitioner. As between the employer (the management) and the employee (the teacher), the implied or express terms, of the contract alone will govern their mutual relationship. When the rules are administrative and not statutory in their effect, and when the management can dispense with the services of its employee (the teacher) after giving 3 months' notice in the usual course without giving any special reasons therefore, such an employee could not invoke the aid of the Court in order to quash the proceedings of the management dispensing with his services. Moreover, there was nothing in the orders of the departmental authorities which was manifestly erroneous upon the face of the record or unjust and opposed to the principles of natural justice as to necessitate the

Court's interference.

Remarks:

Petition dismissed.

12. Citation of the Case:

Ajit Kumar Sarma v.
State of Assam
AIR. 1963 Assam 46.

High Court or Supreme Court: Assam H.C.

The Judge who delivered
the majority Judgment:

G. Mehrotra C.J.

Facts & Arguments:

The Director of Public Instruction, Assam, purporting to act under Rule 7 of the Assam Aided College Employees Rules 1960 directed the management of a private college to dismiss the petitioner, a lecturer in the college. The State's contention was that the D.P.'s order was in the nature of instructions issued by him from time to time in the exercise of his supervisory power and the Court could not interfere with the administrative instructions issued by the D.P.I.

Decision:

After an examination of the Rules the Court held: "It cannot be said that the rule relied upon by the D.P.I. was a rule which had statutory force." and "if these rules have no statutory force, in that event we can under Art. 226 issue a mandamus directing the D.P.I. who is a public authority to refrain from giving effect to a provision which has got no statutory force."

Remarks:

Writ of mandamus issued.

13. Citation of the Case:

Suraj Prasad V. Manager,
A.R.H.S. A.I.R. 1961.
Allahabad 282.

High Court or Supreme
Court:

Allahabad H.C.

The Judge who delivered
the majority Judgement:

V.D. Bhargava J.

Facts & Arguments:

The issue was under what incumstances a writ of mandamus or certiorari would issue against the management of a private school to enforce any rights of a dismissed teacher.

Decision:

A writ would issue only against a private individual if the private individual was acting in collusion with, or the transactions had been merely a colourable one and had been entered into individual. Then in that case it may be that though the individual was acting in collusion with some authority, a writ might issue against that individual also. (So) unless an individual is acting under some public authority no writ of mandamus can be issued against a private individual. When managers of private or aided institutions cannot be said to be acting in any official capacity, they cannot be directed to do a certain thing by means of a writ of mandamus.

Remarks:

Petition dismissed.

14. Citation of the Case:

Arunima Das. v. Secretary,
S.E. Board AIR. 1957. Calcutta
182.

High Court of Supreme
Court:

Calcutta H.C.

The Judge who delivered
the Judgement:

Bose J.

Facts & Arguments:

Could the, under a petition under Art. 226 of the Constitution, give effect to a directory provision in the rules & regulations governing the conduct of enquiries of the members of the staff by Management Schools?

Decision:

Directory provisions cannot be enforced in a writ petition under Art. 226 of the Constitution.

Remarks:

Petition dismissed.

15. Citation of the Case:

Birhari Singh v.
Inspector of Schools,
Manipur A.I.R. 1959 Manipur.

High Court or Supreme Court: Manipur J.C's Court.

The Judge who delivered the majority Judgement: J.N. Datta J.C.

Facts & Arguments:

The Judicial Commissioner's Court in Manipur had to decide in this case the status and function of the Managing Committee of a School as regards dismissal of teachers from school and the jurisdiction of Courts under Art. 226 in dispute arising between them.

Decision:

The Managing Committee of a private school aided by Grants-in-aid is in the petition of a 'domestic' tribunal whose decision can be interfered with by the Court only when the tribunal had no jurisdiction, or it did not follow the principles of natural justice, or did not in good faith or did not according to its own rules. The decision of such a ground that it is against the weight of evidence. Therefore, when a decision of a 'domestic' tribunal comes before a Court of Justice the latter cannot sit over it as a Court of appeal either as regards the finding or the sentence.

The question of promotion of a teacher of a private school receiving grants-in-aid from the Govt. is within the power and discretion of the superior authority and is not

justiciable, unless the question is decided in contravention of the provisions of some specific rules. The High Court will not go into the question of punishment as an appellate court might do, in a proceeding under Art. 226 when the matter is purely within the discretion of the Managing Committee.

Remarks:

Petition dismissed.

16. Citation of the Case:

M.K. Datta v. Ad hoc Committee, Panchya Bharathi, Agarthala AIR 1959 Tripura.27

High Court or Supreme Court:

Tripura J.G. Court.

The Judge who delivered the majority Judgement:

J.N. Datta J.G.

Facts & Arguments:

The question in this case was also to what extent the court can interfere in cases of disputes regarding pay or dismissal of teachers in private managed schools.

Decision:

Whether the petitioner was entitled to claim pay for any period will depend on question of fact which can be decided only after evidence is taken on those points. The court will not under an Art. 226 petition do that. The Managing Committee of the School could at any time say to the School could at any time say to the petitioner, that he should stop teaching, and when saying so add that he should not come to the school or enter its premises the only liability thereby incurred by them being the liability to pay the petitioner even without taking any work him. If an employer can thus debar him, from doing the actual work, he can certainly debar him from entering the office, without incurring any further liability. The court cannot

go into such a proceeding under an Art. 226 petition.

Remarks:

Petition dismissed.

17. Citation of the Case:

Sadasiva Iyer v.
State of Kerala A.I.R.
1960 Ker. 327.

High Court or Supreme
Court:

Ker. .

The Judge who delivered
the majority judgement:

S. Velupillai J.

Facts & Arguments:

The petitioner's services were terminated in alleged violation of certain orders passed pursuant to Madras Educational Rules, subsequent to his appointment as a Headmaster of a School.

The petitioner's claim was that he had a right to continue in employment, and prayed a writ to quash the termination orders.

Decision:

The Court held:

The Madras Educational Rules are only a body of executive orders and instruction. Therefore orders of Govt. in pursuance of such Rules are merely executive instructions, a breach of which is not amenable to judicial review under Art. 226. The conferment of a right of appeal to the aggrieved party, assuming it, to be the virtue of the Madras Educational Rules, is still not sufficient to import a judicial element into the orders which are impugned especially when there is no prescribed procedure for hearing the appeal.....'

Remarks:

Petition dismissed.

18. Citation of the Case: Ramanter Sharma v.
State of Bihar A.I.R.
1959 Pat. 520.

High Court or Supreme Court: Pat.

The Judge who delivered the majority judgement: K. Sahai J.

Facts & Arguments:

The petitioner, a teacher of a private management school challenged an order of his dismissal issued by the M.C. of the School in pursuance of a direction from the Inspector of Schools purporting to rely on Art. 357A of the Bihar Education Code. The Article said that members of the Community Party of India should be dismissed from service.

The petitioner contended that no opportunity had been given to him to represent this case.

Decision:

The Court held:

It is not stated in the Counter affidavit of respondent No.2 (the M.C.) that any opportunity was given to the petitioner to show cause against the order of removal from service... The order of the Inspector of Schools does not exempt the school authorities from following the rules made by the State Govt. regarding appointment and dismissal of teachers in non-Govt. High Schools. We, therefore, hold the order of removal of the petitioner from his service as a teacher is alleged, and without jurisdiction and must be quashed by a writ in the nature of certiorari...

Remarks:

Application dismissed.

19. Citation of the Case: Joseph Mundassery
v. St. Thomas College
Trichur AIR 1954 T.C.
199.

High Court or Supreme Court: T.C.

The Judge who delivered
the majority Judgement: M.S. Menon J.

Facts & Arguments:

The plea of the petitioner, a dismissed teacher of a College, was that though the St. Thomas College was run by funds given by His Grace the Bishop of Trichur, matters relating to education being of paramount importance to the body politic. An educational institution affiliated to a statutory body like the university of Madras and enjoying the benefits of such affiliation should be deemed to be a public institution and its management in quasi-public authority amenable to the writ jurisdiction of the H.C.

Decision:

The Court held:

A writ of St. Thomas Trichur is not maintained from the funds of public trust or by any contribution from public funds. We are not prepared to say that mere factum of affiliation is sufficient to make the management of a private college maintained entirely from private funds a quasi-public authority amenable to the jurisdiction of this Court under Art. 226....

Remarks:

Petition dismissed.

20. Citation of the Case: G.F. Papali v. University
of Travancore. AIR 1957
T.C. 47.

High Court or Supreme Court: T.C.

The Judge who delivered
the majority Judgement: V. Iyengar J.

Facts & Arguments:

The petitioner, a teacher in a private managed college prayed for a writ of certiorari under Art. 226 to quash an order of the college authorities terminating his services.

Decision:

The Court held:

A writ of certiorari will issue only against tribunals set up by law to determine questions affecting right of parties...The receipt of grant from the University or the obligation to conform to conditions by virtue of affiliation does not also affect the question. The institution will still be a private education on its own responsibility...It follows, therefore, that this Court's jurisdiction under Art. 226 has not properly invoked in the instant proceedings so far as the Fatima College and the University are concerned.....

21. Remarks: Petition dismissed.
21. Citation of the Case: Shivendra Bahadur
v. Nalanda College
A.I.R. 1962 S.C. 1210.
- High Court or Supreme Court: S.C.
- The Judge who delivered the majority judgement: J.K. Kapur J. (B.P.
Sinha C.J., M. Hidayatullah,
J.C. Shah, &

Facts & Arguments & Decision:

Please refer to Miscellaneous Supreme Court cases on matters connected with Educational Institutions P.3 case No.4.

22. Citation of the Case: Dr. S. Dutt v. Visitor of
Delhi University AIR 1963
Punj. 331.
- High Court or Supreme Court: Punj. (F.B.)

The Judge who delivered the majority Judgement:

A.N. Grover J.
(D. Falshaw C.J.
& Tek Chanda J.)

Facts & Arguments:

The petitioner's plea was for the issue of a writ to direct the Visitor of Delhi University to act under Sec 7-A (7) of the Delhi University Act to annul certain proceedings conducted by the University against the petitioner. Sec.7-A(7) empowered the Visitor to annul any proceeding of the University not in conformity with the Act, statutes or ordinances of the University. The principal ground urged by the petitioner was that an arbitration in the matter of his termination of service was ineffective.

Decision:

The Court held:

When the award had been finally set aside, it is difficult to see how any decision contained therein could have^a binding force or the stamp of finality under Sec. 7-A(7) by the Visitor even if he was so minded. If the petitioner wants us to issue a writ of mandamus to the Visitor to decide his representation on which so far no decision has been given by him it is incumbent on him to show that the matter falls within Sec. 7-A(7). As pointed out before, the proceedings with reference to which powers of the Visitor are invoked have not been particularized and those which have been indicated in the representation cannot possibly be regarded to fall within the words 'proceedings of the University'.....The discussion above leave no petitioner cannot effectively invoke the powers of the Visitor under Sec. 7-A(7) in respect of the representation made by him...."

- Remarks: Petition dismissed.
23. Citation of the Case: Hazi Mohammad Ibrahim v.
District School Board, Mald.
AIR 1958 Cal. 401.
- High Court or Supreme Court: Cal.
- The Judge who delivered the majority Judgement: P.B. Mukharji, J.

Facts & Arguments:

The petitioner, a teacher in a school challenged a resolution passed by the Distt. School Board, Malda which said that school teachers in the District could not become members of political parties on contest elections. The petitioner contended that these restrictions violated his fundamental freedoms guaranteed in Art. 19 of the Constitution.

Decision:

A teacher in service in the primary school is not merely a citizen but he has also got to be under certain terms and discipline of employment. To prevent teachers from getting mixed up with political institutions is a reasonable restriction in my view. To prevent from entering into rivalries in respect of the Union Board, Panchayat etc. is a reasonable restriction because it is detrimental to their calling and occupation of teaching may get involved. Teachers are all the better by being and remaining non-partisan and non-factions..It is therefore provided by this restriction that the Board's permission should be taken by the teachers of the Primary School to engage in these activities. It is not a total or an absolute ban. It only requires permission of the Board. In every suitable case the permission may be granted. The test is also laid down by which such permission is to be guided... I consider it is

an eminently desirable provision to keep the streams of education clear and unsullied, and save education from undesirable politics.

Remarks:

Petition dismissed.

24. Citation of the Case:

Ramesh Chandra v. H.D. Jain College AIR 1957 Pat. Arrah 145.

High Court or Supreme Court:

Pat.

The Judge who delivered the majority Judgement:

Chaudhary J.

Facts & Arguments:

The petitioner was a teacher in the H.D. Jain College, Arrah till he was dismissed by its Governing Body on the basis of an enquiry report on his conduct. The Court of Additional Subordinate Judge who heard the case in the first instance had held that the burden of disproving those charges lay on the teacher. In his appeal before the High Court the petitioner urged 2 grounds.

(1) the dismissal of the plaintiff by the Governing Body was without reasonable and sufficient cause or without jurisdiction or tainted with malice;

(2) the enquiry committee was not properly constituted and had no power to institute proceedings against him.

Decision:

The Court held:

The decision of the two issues referred to above will mostly depend upon the decision of the question whether the dismissal was justified or not. The circumstances on which it would be argued that the dismissal of the petitioner was justified are within the special knowledge of the defendant and it is for it, therefore, to bring on record the materials

on which it relied to justify the order of dismissal. Sec. 106 of the Evidence Act throws the onus on the defendant to prove these circumstances with regard to the issues referred to above. In my opinion, therefore, the position is perfectly clear that it is for the defendant to establish the justification of the orders of suspension and dismissal and the onus on the two issues referred to above lay on him...."

Remarks:

The appeal was allowed.

25. Citation of Case: Bholu Prasad v. U.A. Goswami
AIR 1963 Pat. 437

The High Court/The S.C: Pat.

The Judge who delivered the majority judgment: N.L. Untawale J

Brief facts and arguments: The nature of the powers of the Chancellor under Sec. 8(4) of the Bihar State Universities Act came up for consideration. The petitioner's appointment as Principal of Rajendra College, Chapra was quashed by the Chancellor of the Bihar State Universities Act. The Section said: "The Chancellor may, by order in writing, annul any proceeding of the University which is not in conformity with this Act, the Statutes, the Ordinances or the Regulations; Provided that, before making any such order, he shall call upon the University to show cause within the time specified by him why such an order shall consider the same."

Summary of decision : The Court held: The power of the Chancellor under Sec. 8(4) is, in my opinion, a power of quasi-judicial nature. The ground on which he can exercise such power is conditioned by the provision itself. Furthermore, it is obligatory to issue a show cause notice to the University as to why an order annulling a proceeding of the University be not made and on such cause being shown, he is bound to consider it....

(2) I am of the view that the impugned order of the Chancellor is ultra vires, without jurisdiction and null and void..... "

Remarks: Petition allowed.

26. Citation of Case: Dasius v. The State
AIR 1957 T.C. 214

The High Court/The
S.C. T.C.

The Judge who delivered
the majority judgment V. Iyengar J.

Brief facts and arguments: Five years after his dismissal the petitioner had prayed for a writ to quash the order of his dismissal.

Summary of decision: Relying on Vasudeyan v. The State (1955) KLT 651) wherein it was held "once the final decision of the Govt. is given a representation is merely an appeal for mercy or indulgence, but it is not pursuing a remedy which the law gave to the petitioner. The existence of a good case on the merits and the absence of any remedy other than Art. 226 are not matters which should weight with a Court in deciding whether the delay that has occurred in a particular case is fatal or not. Delay to be excused required an explanation and such extraneous considerations cannot possibly afford a valid explanation. Though the writ will generally be refused in all cases where the petitioner fails to show that he has proceeded expeditiously, there is no hard and fast rule by which to determine which the right to bring certiorari is barred by laches, as the issuance of the writ is largely a matter of discretion." Applying this test the Court in the present case concluded:
"It is perfectly clear that the petitioner has come to the court after inordinate delay.... On the whole there is no merit in this petition..."

Remarks: Petition dismissed.

27. Citation of Case:

E.P. Johan v. State
A.I.R. 1957 T.C. 265

The High Court/The
S.C.

T.C.

The Judge who delivered
the majority judgment

V. Iyengar, J.

Brief facts and arguments: The petitioner was a teacher in a School in changanacherry from 1933 to 1947 when he was transferred to a school in piravom. His grievance was that his term of service in the Changanacherry School was not taken into consideration by the D.P.I. for starting him at a higher salary.

He contended that Rule 12(3) of the T.C. Private Secondary School Scheme on which the D.P.I. relied was discriminatory and unconstitutional, in that the Rule made a distinction between 'Continuous service' and 'non-continuous service' without any reasonable basis for the classification.

He prayed for mandamus or other appropriate writ.

Summary of decision: The Court held: It cannot be said that the loyalty of a teacher to a management which impels him to put in a continuous service in the same institutions under the same management has no place in the scheme governing the contractual relationship of the management and the teacher entertained by it.

I therefore overule the objection raised on the ground of unreasonable discrimination....

Remarks: Petition dismissed.

28. Citation of Case:

Akshaibar Lal v. V.C.
Banaras Hindu University
AIR 1961 S.C. 619

The High Court/The S.C.

S.C.

The Judge who delivered
the majority judgment:

M. Hidayatullah J.
(S.K. Das & J.C. Shan JJ)

Brief facts and arguments:

Please refer to Miscella-
neous Supreme Court Cases
on matters connected with
Educational Institutions
P. 2 Case no. 3

Summary of decision:

-do-

Remarks

-do-

29. Citation of Case

Dr. S. Dutt v. University
of Delhi AIR 1958 S.C.1050

The High Court/The S.C.

S.C.

The Judge who delivered
the majority judgment:

brief facts and arguments

Please refer to Miscellaneous
Supreme Court cases on
matters connected with Educa-
tional Institutions P.1
Case No. 1.

Summary of decision:

-do-

Remarks:

-do-

30. Citation of Case

K. Chandhersi v. R.K.Datta
Fupta AIR 1957 S.C.722

The High Court/The S.C.

S.C.

The Judge who delivered
the majority judgment

J.L. Kapur J. (N.H. Bhagwati
& A.K. Sarkar JJ.)

brief facts and arguments:

Please refer to Miscellaneous
Supreme Court Case on
matters connected with Educa-
tional Institutions.

- 185 -

Summary of decision : Please refer to Miscellaneous
Supreme Court Case on matters
connected with Educational
Institutions.

Remarks: -do-

Miscellaneous Supreme Court cases on matters
connected with Educational Institutions

1. Citation of the Case: Dr. S. Dutt
v. University of
Delhi A.I.R.
S.C. 1050

The High Court & the
Supreme Court. S.C.

The Judge who delivered
the majority Judgment. A.K. Sarkar J.
(T.L. Venkaraman
Aiyar, & B.P.
Gajendragadkar JJ.)

Brief facts & arguments.

The appellant was a Professor in the University of Delhi. He was dismissed by the V.C. An arbitrator was appointed under the relevant section of the University Act to go into the matter according to the proceedings governed by the Arbitration Act 1940.

The University got the award of the arbitrator set aside by the High Court on the ground that it was bad under the Arbitration Act and revealed an error on the face of record.

The summary of the Decision.

The Supreme Court held that the High Court's finding was correct and dismissed the appeal.

Remarks: The appeal was dismissed.

2. Citation of the Case: J.K. Chaudhari v. R.K. Datta
Gupta. A.I.R. 1958 S.C. 722.

The High Court & the
Supreme Court. S.C.

The Judge who delivered
the majority
Judgment J.L. Kapur. J.
(N.H. Bhagwati &
A.K. Sarkar JJ.)

Brief facts & arguments

This was the appeal from the judgement of the High Court of Gauhati. The issue was whether the University

of Gauhati had under the relevant Act power to interfere in the appointment of a Principal in an affiliated College.

The summary of the Decision:

On examination of the Gauhati University Act the Supreme Court came to the conclusion that the authority of the University to interfere in matters concerning teachers of affiliated colleges did not extend to persons who were teachers as well as Principals.

Therefore, the interference by the University in the decision taken by the Governing Body of an affiliated College was held illegal as an excess of jurisdiction committed by the University.

Remarks: The appeal was allowed.

3. Citation of the Case: Akshaiber Lal v. Vice-Chancellor, Banaras University. A.I.R. 1961 S.C. 619.

The High Court & the Supreme Court. S.C.

The Judge who delivered the majority Judgment. M. Hidayatullah J. (S.K. Das & J.C. Shah JJ.)

Brief facts & arguments.

This was a Civil Appeal against the judgment of Allahabad High Court. The issue was the dismissal of the appellants (teachers) by the University by an Order of the Executive Council of the University.

By statute 30 Parliament had provided for an additional ground of dismissal viz., if the incumbent's presence was detrimental to the interests of the University. Proceedings were started under this Statute. They were stopped by an order of the High Court. Later-on the

Executive Committee started proceedings again but on other grounds and terminated the services.

The summary of the Decision:

The Court held that, a proceeding started under the statute 305 cannot be stopped in the middle and, proceeding on grounds mentioned in other earlier ordinances and agreements could not be invoked to dismiss an incumbent.

4. Citation of the Case: Shivendra Bahadur v. Nalanda College A.I.R. 1962 S.C. 1210.

The High Court & the Supreme Court. S.C.

The Judge who delivered the majority Judgment. J.L. Kapur J. (B.P. Sinha C.J., M. Hidayatullah, J.C. Shah & J.R. Mudholkar JJ.)

Brief facts & arguments:

The petitioner appellant was the Principal of the College under its old Constitution and his appointment was also made by the out-gone Governing Body. Under the new Constitution, and the new Chairmen of the Governing Body a new Principal was selected and appointed, and the petitioner-appellant was asked to hand over charge to the new appointee. Therefore, the petitioner had filed a petition under Art. 226 in the Patna High Court and lost his case.

The summary of the Decision:

The Court held that:

1. According to the statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for

appointment or reinstatement.

2. In order that a mandamus may issue to compel the Governing Body of a College to do something it must be shown that the statutes framed by the University under S. 20 of the University of Bihar Act impose a legal duty and the petitioner has a legal right under the statutes to enforce its performance. Hence, he cannot come to Court and ask for a writ to issue against the governing body.

Remarks:

The Appeal was dismissed.

MISCELLANEOUS CASES CONCERNING EDUCATIONAL MATTERS

1. Citation of Case: Dr. Brij Mohan Sharma v.
Chancellor, Lucknow University
A.I.R. 1961 All. 331.

The High Court/ Allahabad
The S.C. (Lucknow Bench).

The Judge who delivered Tandon J.
the majority judgement:

Brief facts & arguments: Two dates of birth of the petitioner were recorded, namely (1) 27.1.1900 (2) 15.1.1898. The latter was as per High School Certificate. The Ex. Council of the Lucknow University accepted 15.1. 1898 as the true date of birth and decided that Dr. Sharma should continue to serve upto 30.4. 1958.

Dr. Sharma made a representation to the Chancellor that his date of birth was 27.1.1900 and that he could not be super-annuated earlier than 27.1.1960. Meanwhile, the Vice-Chancellor decided in favour of accepting 15.1.1898 as the real date of birth. Dr. Sharma made another representation to the Chancellor that an arbitration tribunal be appointed under S. 44 of the Lucknow University Act to decide the issues raised under the representation. This and two more similar representations to the Chancellor to review his decision, were rejected by the Chancellor.

The relief claimed was a writ in the nature of certiorari quashing the aforementioned orders.

Summary of the decision: The Court held :

Sec. 44 does not place any liability on the Chancellor to set up a tribunal if and when so required by any party. Having regard to the provision in S. 44 read with Sec. 46 and 47 of the Arbitration Act, 1940, the petitioner's remedy against the refusal by any party to the dispute to constitute the tribunal of arbitration lies by an application under S. 20 of the Arbitration Act, 1940. The instant proceeding under Art. 226 therefore deserved to be dismissed on the ground of alternative remedy.

Hence, the instant petition ought to fail.

Remarks: Petition dismissed

2. Citation of Case: S.N. Shukla v. Chancellor,
Lucknow University.
A.I.R. 1961. All. 401.

The High Court/ Allahabad (Lucknow Bench)
The S.C.

The Judge who delivered Tandon J.
the majority judgment:

Brief facts and arguments: Two Professors in Chemistry Department of Lucknow University were appointed. The petitioner was appointed against the post granted by U.G.C. for 3 years, and the other Professor Dr. A.B. Sen was appointed against a permanent substantive post.

The Vice-Chancellor on the basis of seniority by age appointed Dr. Shukla as Head of the Department. On representation by Dr. Sen to the

Chancellor, against the appointment made by the Vice-Chancellor, the Chancellor made an order declaring Dr. Sen as the Head.

The petitioner prayed for a writ of certiorari to quash the Chancellor's order and a writ of mandamus to the Vice Chancellor and the University not to give effect to it.

Summary of the decision: The Court held :

Where the post of a Professor in an University was advertised in pursuance of the grant of the U.G.C. which made it clear that the grant was being given for a limited period of 3 years only, the appointment of a person as a Professor is on a temporary basis only and not on permanent basis. Therefore, a person employed in a clearly temporary capacity could not claim seniority over a person who held a post of similar rank in a permanent substantive capacity.

Remarks: Petition dismissed.

3. Citation of Case: Ashalata V. M.B. Vikram
University. A.I.R. 1961
M.B. 299

The High Court/ M.B.
The S.C.

The Judge who delivered H.R. Krishnan J.
the majority judgment:

Brief facts & arguments: The petitioner, who had failed in the B.Sc. Part I Examination of 1960 and was preparing for 1961 Examination, challenged a change of text books for B.Sc. Part I

Examination of 1961, made by the Vikram University. Her grievance was that the change made for the 1961 course has put her "to financial loss and exposed her to extra strain." Her grounds were that the Board of Studies which made this change had not been properly constituted. The Board's meeting at which the decision was taken to change the books was presided over by a Chairman elected ad hoc and not by a person nominated by the Vice-Chancellor as under the rules. Hence, it was contended the decision of the Board was void.

Summary of the decision: The Court held :

The point is that there is no law against such a change that this court should enforce by a writ or direction.

In matters like the prescription of text books or other academic functions, it is not the compliance with the letter of the law that is important. What is important is a general substantial compliance as long as the results are not affected. Thus, in this case, the absence of the nominated Chairman notwithstanding, there is no occasion for the exercise of powers under Art 266 of the Constitution.

Remarks: Petition dismissed

4. Citation of the case: S.C. Barat v. H.V.
Pataskar A.I.R. 1962
M.P. 180

The High Court/
The S.C. M.P.

The Judge who delivered
the majority judgment: P.V. Dixit C.J.

Brief facts & arguments: This was a petition under Art. 226, praying for a writ to quash the order made by the Chancellor (respondent No.1) appointing Dr. A.V. Mishra (respondent No.4) as Vice-Chancellor of the Jabalpur University, and for directions to the Chancellor for the appointment of the Vice-Chancellor in accordance with S.II of the Jabalpur University Act. 1956.

The petitioners, members of the University Court, contended that the Panel of the names from which the Chancellor selected Dr. A.V. Mishra for Vice-Chancellorship was defective as the sub-committee which had submitted the names for Vice-Chancellorship, was constituted in violation of the provisions of S.II(2). Persons in any capacity connected with any affiliated College or with the University were disqualified from being included in the sub-committee consisting of 3 persons - 2 appointed by the Ex. C. and one by the Chancellor. Here, one of the members of the impugned sub-committee was a member of the Governing Body of a College.

The Chancellor had rejected the representation made by the petitioners, hence the present

Examination of 1961, made by the Vikram University. Her grievance was that the change made for the 1961 course has put her "to financial loss and exposed her to extra strain." Her grounds were that the Board of Studies which made this change had not been properly constituted. The Board's meeting at which the decision was taken to change the books was presided over by a Chairman elected ad hoc and not by a person nominated by the Vice-Chancellor as under the rules. Hence, it was contended the decision of the Board was void.

Summary of the decision: The Court held :

The point is that there is no law against such a change that this court should enforce by a writ or direction.

In matters like the prescription of text books or other academic functions, it is not the compliance with the letter of the law that is important. What is important is a general substantial compliance as long as the results are not affected. Thus, in this case, the absence of the nominated Chairman notwithstanding, there is no occasion for the exercise of powers under Art 266 of the Constitution.

Remarks: Petition dismissed

4. Citation of the case: S.C. Barat v. H.V.
Pataskar A.I.R. 1962
M.P. 180

The High Court/
The S.C. M.P.

The Judge who delivered
the majority judgment: P.V. Dixit C.J.

Brief facts & arguments: This was a petition under Art. 226, praying for a writ to quash the order made by the Chancellor (respondent No.1) appointing Dr. A.V. Mishra (respondent No.4) as Vice-Chancellor of the Jabalpur University, and for directions to the Chancellor for the appointment of the Vice-Chancellor in accordance with S.II of the Jabalpur University Act. 1956.

The petitioners, members of the University Court, contended that the Panel of the names from which the Chancellor selected Dr. A.V. Mishra for Vice-Chancellorship was defective as the sub-committee which had submitted the names for Vice-Chancellorship, was constituted in violation of the provisions of S.II(2). Persons in any capacity connected with any affiliated College or with the University were disqualified from being included in the sub-committee consisting of 3 persons - 2 appointed by the Ex. C. and one by the Chancellor. Here, one of the members of the impugned sub-committee was a member of the Governing Body of a College.

The Chancellor had rejected the representation made by the petitioners, hence the present

petition.

The question to be decided was whether the injunction address to the Ex. C. under S.II was directory or mandatory.

Summary of the decision: The Court held :

The question whether a statutory provision is absolute or merely directory has to be determined not only on the language of the provision but also on the relation of that provision to the general object intended to be secured by it ... It is erroneous to say that the Committee constituted under sub-sec. (2) is only advisory in that it is open to the Chancellor to accept or ignore its recommendations. The penal of names submitted by the Committee is binding on the Chancellor. Sub-sec. (I) does not give absolute and unregulated discretion to the Chancellor in the matter of making the appointment of the Vice-Chancellor. The provision that the nominees of the Executive Council shall be from amongst persons not connected with the University or a College in Sec. II(2) is one prescribing a qualification and as disqualifying persons connected with the University or College from being appointed as nominees of the Ex. C. This provision is clearly mandatory.

Hence, appointment of Dr. A.V. Mishra as Vice-Chancellor of the Jabalpur University is invalid, and that a new appointment in accordance with S.11 must be made.

.. 1964
Remarks: Petition allowed.

5. Citation of the Case: Chinnamma v. Regional
Deputy D.P.I.
A.I.R. 1964
A.P. 277.

The High Court/
the S.C. Andhra Pradesh

The Judge who delivered
the majority judgment: Narasimham J.

Brief facts & arguments: The petitioner was a nun working as a women teacher in R.C.M. Elementary School, Guntur. For her conduct unbecoming of a nun, the Bishop of Guntur in his capacity as the head of the Diocese expelled her from the sister-hood. In defiance of the Canon Law she persisted in wearing the religious habit of a nun after her expulsion. The authorities also removed her as a teacher. On appeal to the educational authorities she was ordered to be reinstated. On representation by the Mission authorities the reinstatement was made subject to the discipline of the covenant with regard to the dress. The Mother-General issued a direction that the petitioner should attend the school wearing a saree and a blouse as a lay woman teacher. The present writ petition was against this order and the prayer was for declaring the direction about her dress as illegal and that it was still open to her to wear the religious

habit of a nun. She contended that the schools run by the Roman Catholic Mission were secular institutions subject to the ordinary law which prescribes no particular dress for teachers in schools, and so the direction that she should not wear a nun's dress was illegal.

Summary of the decision: After quoting Arts. 26 and 30 as regards rights of religious denominations and minorities to establish, maintain and administer religious and educational institutions of their choice the Court held:

1.".... The Roman Catholic Mission with which we are now concerned, could therefore establish and maintain the Churches and manage their affairs in matters of religion. In this view, they could legally expel the petitioner from the community of sisters, otherwise known as nuns. Under Art. 30 the Roman Catholic Mission could run schools and manage them. There is a special safeguard for State aid to their schools. The term 'administrator' the educational institution is wide enough to take in enforcement of discipline in regard to dress and other matters... We are unable to see how the direction that the petitioner, an expelled nun, shall not wear the 'religious habit' of a nun, could be questioned when indisputably nuns have a distinctive dress known as 'the religious habit' which only nuns could wear. It is impossible to countenance the argument that the petitioner, an

expelled nun, could wear the 'religious habit' of a nun.

2. There is nothing in the chapter of fundamental rights embodied in Part III where-under such a right is expressed or could be inferred... the Mission Authority is a private body and the petition complaining of an infringement of a fundamental right does not lie against the said body.. for all these reasons we are of the view that this writ petition must be dismissed.... "

Remarks: Petition dismissed

6. Citation of the Case: Venkataswami v. University of Mysore.
A.I.R. 1964
Mysore 159.

The High Court/
the S.C. Mysore

The Judge who delivered
the majority judgement: A. Narayana Pai J.

Brief facts & arguments: The 1st respondent, the Registrar of the Mysore University invited applications for appointment in respect of certain posts of professors and readers. The petitioner applied for appointment to the post of a reader in Physics. The Board of Appointments selected respondent No.2 for the post of professor and respondents 3 to 5 to the posts of readers. The petitioner filed a writ petition challenging the validity of the appointments and prayed for quashing of the order of appointment and for restraining them from functioning as professor or readers.

He alleged that certain additional qualifications prescribed by the Board of appointments over and above those prescribed by the Syndicate's Ordinance was motivated by unfair interest because, he alleged, respondents No.2 and 3 were nephews of an eminent member of the Board of appointments at whose instance the additional qualifications were prescribed.

Summary of the decision: The Court held :

".... (The Board of Appointments) can be said to have contravened an Ordinance only if they dispensed with any of the qualifications prescribed by the Ordinance.

1. The proper view to take in this matter is that the Ordinance prescribed the minimum qualifications without which no person can be considered for an appointment but that where the particular post in respect of which a selection is required to be made by the Board of Appointments is of such a character as to require further or higher qualifications than those prescribed by the Ordinance, it cannot be said that the Board of Appointments has no authority to insist upon a candidate possessing those superior qualifications before they can recommend him for appointment to the post in question.... "

2. It cannot also be said that the object to a person being a judge in his cause necessarily applies even in every case where quasi judicial functions

are discharged by administrative bodies or statutory authorities. It would depend on the provisions of the relevant statutes some of which contain express provisions enabling particular authorities to function in a manner closely resembling that of a person being a judge of his own cause. In the present case, there can be no doubt that the Board of Appointment was ^{discharging} purely an administrative function. The mere fact that for an appointment to a particular post a selection has to be made from among several candidates does not, in our opinion, constitute a lie between one applicant and another, nor can it be looked upon as involving a proposition by one candidate and an opposition by another, or a proposition by one candidate and an opposition by the selecting authority itself. The question really therefore is not one of bias so called which is a relevant consideration in cases of the exercise of judicial or quasi-judicial functions, but one of mala-fides or improper motives...

3. If the person selected or appointed is duly qualified and could reasonably be expected to get selected on a fair consideration as his merits by independent persons, the fact that the Board or the body which actually selected him happens to be related to him or has had opportunity to form an opinion about his abilities in other capacities cannot, in

-: 201 :-

our opinion, by itself vitiate the selection....

4. Considering all the circumstances of this case, we are not satisfied that a case is made out for interference with the appointment of the 3rd respondent on the ground of mala fides.

Remarks: Petition dismissed.

PRESCRIBING TEXTBOOKS

1. Citation of Case: Manjula v. D.P.I. A.I.R. 1952
Orissa 345.

The High Court/The S.C: Orissa

The Judge who delivered the majority judgment: Panigrahi J.

Brief facts & arguments: The petitioner was a proprietrix of a firm of publishers of text books, her publication was dropped from the approved list. This caused her a loss of few thousand rupees as a large number of copies of the book remained unsold. Under the Bihar and Orissa Education Code once approved publication continued ordinarily for at least two years.

Relying on the Code's provision, she petitioned the Court that her legal right was infringed.

Summary of decision: The Court held that the Code was not a statutory enactment, The Text Book Committee formed under it was suspended by the Government, and all powers were vested in the Director.

When Director had exercised his discretion and acted according to the instructions of the Government in good faith and bona fide, the Court could not interfere.

Further, "no publisher had a right to expect that his or her publications would be approved or continued...."

Remarks: Petition dismissed.

217

2. Citation of Case: Gopal Chetty v. Director of
Public Instruction A.I.R. 1985
Mys. 81.

The High Court/The S.C: Mysore

The Judge who delivered the
majority judgment: Venkataramaiya J.

Brief facts & arguments: The petitioners were dealers in copy books. They were adversely affected by the Order of D.P.I. prescribing copy-books of a particular dealer to the exclusion of others.

The petitioner had contended that the order was arbitrary and designed to create a monopoly in favour of a particular businessman. It violated Art.19(1)(g).

That the D.P.I. had no authority to issue order prescribing books.

Prescribing copy-books was illegal as a copy cannot be called a 'Text-book'. Authorisation of the power was to prescribe Text-books.

Summary of decisions: (1) The Court held that under the Mysore Education Manual and Notifications prescribing text-books was assigned to the Secondary Education Board and not to the Director alone (who was its chairman).

Thus the order was (2) By prescribing copies sold by one businessman to the exclusion of others, a monopoly was created in his favour. This violated rights of other businessmen as guaranteed by Art.19(1)(g) of the Constitution. Restrictions could only be imposed in the interest of the Public which was not here protected.

(3) The order was issued in an arbitrary manner without following a prescribed and established procedure.

(4) The Court gave some characteristics of Text-book

and observed that a copy-book cannot be strictly a text-book.

3. Citation of Case: Chaitanya Prakash Ev. Board of Sec.

Education. A .I.R. 1960 Raj. 185

The High Court/The S.C: Raj.

The Judge who delivered the majority judgment: Bhandari J.

Brief facts & arguments: The name of the petitioner's firm registered for 5 years in the list of approved publishers was struck off only after two years. This, according to the Board, was done in view of various irregularities committed by the petitioner in sale of prescribed books and in seeking approval for books published by his firm.

The petitioner had contended that books submitted by the firm for approval were not considered by the Board and the name of the firm from the approved list was cancelled in an arbitrary manner without providing any opportunity to be heard.

It was also contended that the petitioner's right to continue on the registered list of approved publishers was infringed by the action of the Board.

Summary of decision: The Court held that no right of the petitioner was infringed, he could carry on his business as before. The Board was rather like a customer and the petitioner had no right to have particular customers or that the Board should adopt a course which may eventually create a field for sale of the petitioner's books.

(2) The Board under the Act and Regulations did not act as quasi-judicial body while cancelling the registration of a publisher of educational books, it

acted administratively for a greater duty of placing secondary education on a sound footing.

The Board was neither deciding dispute between two contestant parties, nor its action was going to affect any body's rights and there was no provision either under the Act or Regulations which might be said to impose a duty to act judicially or quasi-judicially. Therefore, while discharging an executive function in good faith no question of arbitrariness arise even when opportunity to be heard was not afforded.

Remarks: Petition dismissed.

RUSTICATION OF STUDENTS ON DISCIPLINARY GROUNDS

1. Citation of Case: Jang Bahadur v. Principal,
Mohindra College, AIR 1951
Pepsu 59.

The High Court/The S.C.: PEPSU

The Judge who delivered
the majority judgment: Teja Singh C.J.

Brief facts and arguments: The petitioner had issued a hand-bill in which he had strongly criticized and condemned his College authorities. He was rusticated by the Principal.

The petitioner claimed that his right under Art. 19(1)(a) of the Constitution was affected by the Principal's order in that he was penalised for expressing his views and opinion.

Summary of decision: The Court held that the rights under Art. 19(1) of the Constitution are subject to qualification that their exercise should not infringe the rights of others. In view of the relationship between student and teacher as it is considered in the interest of society at large and discipline, the student's action was condemned by the Court and the rustication was upheld.

Remarks: Petition dismissed.

2. Citation of Case: Jang Bahadur v. Principal,
Mohindra College. AIR 1951
Pepsu 61.

The High Court/The S.C.: PEPSU

The Judge who delivered
the majority judgment: Teja Singh C.J.

Brief facts and arguments: This was an application under Art. 132 of the Constitution, for permission to

to appeal to the Supreme Court on ground that a substantial point of law was involved i.e. question regarding the competency of the Principal to rusticate the petitioner.

Summary of the decision: The Court held that no substantial point of law was involved (in the above case) as the Principal was competent as head of the institution to take the disciplinary action and rusticate the petitioner.

Remarks: Petition dismissed.

3. Citation of Case: Shibani Bose v. Krishna Moorthy.

AIR 1952. Cal. 238.

The High Court/The S.C.: Calcutta.

The Judge who delivered the majority judgment: Bose J.

Brief facts and arguments: The petitioner was persistent in her acts of indiscipline towards her teachers inside the class-room. Under S.26(a) Ch. 23 Cal. University Regulation she was asked to leave the College and accept her T.C. which was to be issued to her free of cost otherwise action would be taken against her under section 33(3) of Ch. 23.

The S.26 authorised the Principal to take action without assigning any reason to student but before issuing the T.C. he was required to take approval of the governing body of the College and inform the University. The Principal had taken both steps.

S.33(3) authorised the principal to expel a student for breach of College discipline.

The petitioner contended that no opportunity to be heard was provided to her and it was contrary to natural justice.

Summary of the decision: The Court held that -

(1) The Principal, Governing Body of the College and the University while acting u/s 26(a) or S.33(3) were acting administratively.

(2) They were not obliged to adopt any formal or legal procedure.

(3) It was enough if they had given the petitioner an opportunity to make representation against the proposed action, before action, before her right to be educated was affected. No hearing before the governing body or the syndicate was necessary.

(4) Matters of College discipline are entirely matters of internal affairs of the college concerned, and subject to the decision of the College authorities; outside the purview of the Court.

Remarks: Petition dismissed.

4. Citation of Case: C.D. Sekkilar v. Krishna Moorthy

AIR 1952. Mad. 151.

The High Court/The S.C: Madras.

The Judge who delivered the majority judgment: Subba Rao J.

Brief facts and arguments: The petitioner, on account of serious misconduct, was asked by the Principal to leave the College and his T.C. was issued to him.

It was contended on behalf of the petitioner that (1) his legal right to continue his studies in the College was affected.

(2) The action of the College authorities was arbitrary and against the fundamental principles of natural justice.

(3) hence he was entitled to writ of mandamus.

Respondent contended that the action was entirely within the administrative jurisdiction of the College authorities and the College being a private institution no mandamus could be issued to it.

Summary of the decision: The Court held:

(1) The writ could be issued to any public or quasi-public body or an officer which is under obligation statutory or otherwise to do or to refrain from doing anything which is likely to interfere with the rights of a person.

(2) College and its Principal, maintained out of a public-trust, affiliated to the University, and governed by the rules of the University is certainly a quasi-public body.

(3) A student has a right to continue studies at a College to complete his course, until he is removed or expelled in strict compliance with rules.

(4) The maintenance of discipline and upkeep of standards behaviour of students are primarily entrusted to the Principal or other officers of the institution. The H.C. would not interfere except when it is established that the action was arbitrary and an abuse of discretion.

(5) The principles of natural justice is an elastic conception and it would be wrong to import the conception of 'lis' in the dealings of a Principal with his students.

(6) The Court, however, expressed its concern that the authorities had not granted pardon on unconditional apology from the petitioner.

Remarks: The petition was dismissed.

5. Citation of Case: Keshav Chandra v. Inspector of Schools
A.I.R. 1953.

The High Court/The S.C: All.

The Judge who delivered the majority judgment: Malik C.J.

Brief facts and arguments: The Inspector of Schools had passed an order of rustication against the petitioner for his alleged participation in a fracas in front of his school, without a report from the head of the institution and without any enquiry into the matter.

Summary of the decision: The Court held that -

(1) The Inspector had acted without jurisdiction as under para 96 of U.P. Education Code he could act only on the Principal's report.

(2) He had violated the principles of natural justice as he had not conducted any enquiry.

(3) As for students right to apply to the H.C. in cases of indiscipline, the Court observed that the High Court would not like to interfere in matters connected with internal autonomy of educational institutions. To allow the claimed right claimed would be subversive to discipline.

Remarks: Petition allowed.

6. Citation of Case: Ranvir Singh v. Distt. Inspector of Schools. AIR 1954 636.

The High Court/The S.C.: ALL.

The Judge who delivered the majority judgment: V. Bhargava J.

Brief facts and arguments: The petitioner was rusticated by the Inspector of Schools under rule 96 of the U.P. Ed. Code on a report from the Principal about his misconduct.

It was contended that -

(1) there was violation of rules of natural justice as the Inspector had not provided any opportunity to the petitioner put his case.

(2) that the punishment was not proportional to the act of indiscipline.

Remarks: Petition dismissed.

7. Citation of Case: Beni Madho Lal v. Bihar S.E. Board
A.I.R. 1954 Pat. 405.

The High Court/The S.C.: Patna.

The Judge who delivered the majority judgment: Ramaswami & Choudhary J.J.

Brief facts and arguments: On an alleged act of indiscipline the Inspector of Schools had rusticated the petitioners without any enquiry.

Summary of the decision: The Court held that -

(1) The Inspector had acted in excess of his powers as under the Bihar and Orissa Education Code rustication or expulsion could be imposed by the Managing Committee.

(2) Further, the petitioners were no more students as they had passed the High School and were ex-students of the College.

The order was quashed.

Remarks: Petition allowed.

8. Citation of Case: Sadhu Ram v. Principal, Rajindra
College. A.I.R. 1951. Pepsu 151.

The High Court/The S.C.: PEPSU.

The Judge who delivered the majority judgment: Mehar Singh J.

Brief facts and arguments: The petitioner was expelled

by the Principal on a solitary incidence that he had written a simple letter to a girl student of the same college. Further, the action was taken summarily.

Summary of the decision: The Court held that -

(1) in consideration of the nature (a simple letter) of the solitary instance of misconduct, the action taken by the Principal, was unjustified.

(2) The action was taken in violation of the principles of natural justice as the petitioner was condemned unheard.

(3) A Solitary instance may be a sufficient ground to take a disciplinary action but that would depend on the circumstances of each case and the nature of the solitary act.

Remarks: Petition allowed.

9. Citation of Case: Ramlal Gupta v. Principal, Victoria College. A.I.R. 1955. M.B.33.

The High Court/The S.C.: Madhya Bharat.

The Judge who delivered the majority judgment: Dixit J.

Brief facts and arguments: The petitioner had suppressed the fact that he was an employee also, for this breach of discipline the Principal had expelled him from the College.

Summary of the decision: The Court refused to interfere with the exercise of discretion by the Principal in disciplinary matters, until the exercise of discretion is found to be arbitrary or malafide.

The Court expressed its satisfaction that the Principal had accepted the apology tendered by the petitioner and had agreed to take him back into the College (the petitioner had already resigned from the service).

Remarks: Petition dismissed.

10. Citation of Case: Jogindra Raj v. Allahabad University. A.I.R. 1956 All. 503.

The High Court/The S.C.: All.

The Judge who delivered the majority judgment: Mehrotra J.

Brief facts and arguments: The petitioner was expelled by the Vice-Chancellor on report of the Proctors that he had committed acts of indiscipline by delivering speeches in objectional language.

The petitioner contended that the principles of natural justice were violated as he was not afforded opportunity to be heard before the order was passed by the Vice-Chancellor.

That the language was not objectionable.

The petitioner had admitted that at the time the order was passed he was not a student of the University, nor he had been granted admission when the petition was filed. (His name was earlier struck off the rolls for non-payment of fees).

Summary of decision: The Court pointed out that the petitioner not being the student of the University when the order was passed, his no right was affected, and he was not entitled to file a petition under Art. 226 of the Constitution.

(2) In disciplinary matters which require immediate action, it is not necessary to observe principles of natural justice. And, the Courts would be reluctant to interfere with the discretion exercised by the disciplinary authority.

(3) The Court cannot investigate into the truth or otherwise of the allegation about the actual words used by the petitioner in his speeches.

(4) The Vice-Chancellor had acted within the jurisdiction.

Remarks: Petition rejected.

11. Citation of Case: Ram Chandra v. Allahabad University.

A. I. R., 1956.

The High Court/The S.C: All

The Judge who delivered the majority judgment: V. Bhargava J.

Brief facts and arguments: The petitioner was one of the students rusticated for their acts of indiscipline committed by them at a convocation of the University.

The petitioner had sought to quash by a writ the proceedings of the Enquiry Committee, on ground that he was not given opportunity to cross-examine the witnesses.

(2) Vice-Chancellor's order for rustication be quashed as it was issued without observance of rules of natural justice.

(3) The University be ordered to treat him as a student and allow him to appear at the examination.

It was also contended on his behalf that the statute which authorised the Vice-Chancellor to take disciplinary actions against students was void and ultra vires of the Constitution under Art. 14; in that the Legislature has not defined what is discipline, nor, it has placed any limitation on powers to punish.

Summary of the decision: The Court held that:

(1) The Statute conferring powers on the Vice-Chancellor to award punishments for maintenance of discipline was not invalid, as there was no need to define discipline, or put limitation on power to punish. If the object of establishment of a University and its working are known, it could be well understood what would be discipline in the University. And, Vice-Chancellor can well appreciate it.

The object of punishment is to maintain the discipline and that is in itself a sufficient limitation on the exercise of the power to punish.

(2) In disciplinary proceedings a right to the procedure necessary for the exercise of judicial or quasi-judicial powers cannot be claimed. No question of violation of principles of natural justice. Further, it was found by the Court that the petitioner had replied many questions

of the Enquiry Committee which he had later on resiled from.

Remarks: Petition dismissed.

13. Citation of Case: Rana Pratap v. B.H.U. A.I.R.1960.

All 256

The High Court/The S.C.: All

The Judge who delivered the majority judgment: Chaturvedi J.

Brief facts and arguments: The petitioners were issued orders of rustication and expulsion for their acts of indiscipline. The orders were circulated to all Universities in India. The decision on the guilt and the punishment was taken by the Standing Committee which had also issued the directions. Under the Statute it was the duty entrusted to the Academic Council. Further, the task of investigation was imposed by the Executive Council on the Standing Committee but it was actually done by another Committee appointed by the Vice-Chancellor.

The orders and directions were challenged to be without proper authority under the Statute.

The petitioners had claimed their right to approach higher authorities.

Summary of the decision: The Court held that the Standing Committee had acted without any authority in violation of statutory provision. The Academic Council under its power of delegation had not delegated to the Standing Committee any authority to issue directions and take decisions, it still vested in the Academic Council itself. Hence the orders of rustication and expulsion were invalid.

The Statute did not confer any right on students to approach higher authorities which of their own could

enter or refuse to enter into question whether the Standing Committee had acted rightly or wrongly or had power to impose the punishment.

Remarks: Petition allowed.

14. Citation of Case: Rana Pratap v. B.H.U. A.I.R. 1960
All. 579

The High Court/The S.C.: All.

The Judge who delivered the majority judgment: J.K. Tandon J.

Brief facts and arguments: The petitioner was rusticated and expelled from the University for his acts of indiscipline spread over a period of few months during which much unrest had prevailed in the 'iversity campus'. A charge sheet was served, on him and he was required to submit his explanation as to why disciplinary action be not taken against him. The petitioner had denied all the charges, and written that any action taken against him would be unjustified.

Against the order, his contention was that the principles of natural justice were violated in that the charges were not specifically mentioned in the charge-sheet, that the other reports taken into consideration by the authorities were not disclosed to him and that he was not afforded proper opportunity to explain his case.

Summary of the decision: The Court held that :

(1) Notification of charges in disciplinary proceeding cannot be same as in judicial or quasi-judicial proceedings. More over, when incidents are spread over months a reference to the transaction of which they are parts, is ordinarily sufficient.

(2) In the interest of maintaining discipline and safeguarding the advancement of the whole object for which the institution exists, it may quite often be undesirable to disclose the reports which are taken into consideration on their conduct and behaviour.

(3) Nature of the opportunity to be heard varies with the facts of each particular case. In disciplinary matters it is very narrow.

The Court upheld the proceedings and orders of rustication and expulsion.

Remarks: Petition dismissed.

15. Citation of Case: Swapan Roy v. Khagendra Nath
A.I.R. 1962 Cal. 520.

The High Court/The S.C: Calcutta.

The Judge who delivered the majority judgment: B.N. Banerjee J.

Brief facts and arguments: The petitioner was asked to leave the College and was issued the T.C. under the Statutory provision authorising the Principal to take such action in cases in which he considered that such action was in the interest of the institution. The Principal had to report the action taken by him to the University.

The petitioner had asked the Principal to withdraw the order, failing in his request he approached the Court.

Contentions:

(1) Petitioner's right to continue his studies until he completed his University Examination was infringed.

(2) Before passing the order he was not afforded opportunity to show cause against the proposed action.

Summary of the decision: The Court held that,

(1) under statutory provision, petitioner's right to continue in the College came to an end as soon as a T.C. was issued to him.

(2) The Statute has left the action to be taken by the Principal in the interest of the institution to his subjective satisfaction. And, in cases where orders depend on subjective satisfaction, it is of no use to maintain that any opportunity to show cause should have been provided.

(3) Though the College was affiliated to the University, of which the rules and regulations were applicable to it (College), yet the Court held the College as a private institution. Thus, a writ to the Principal of a private institution could not be issued.

Remarks: Petition dismissed.

16. Citation of Case: Trilochan Singh v. Director, S.I.S. Institution. A.I.R. 1963. Mad. 68.

The High Court/The S.C: Madras.

The Judge who delivered the majority judgment: S.R.Iyer C.J.

Brief facts and arguments: The petitioner was expelled from a vocational institution for his misbehaviour towards a girl in the locality adjoining the institute. His training was also terminated.

Contentions -

(1) The authority has no power to take the action as relations between trainees and institution are governed only by the terms of agreement entered between them and there is no power to take a disciplinary action outside the terms of agreement.

(2) The action taken in violation of principles of natural justice.

(3) The punishment was excessive.

Summary of the decision: The Court held that head of an institution has inherent power to take actions for maintenance of discipline in the institution.

(2) A head of an institution is not responsible only for the pupil who errs but his responsibility is wider to protect morale of other students or trainees of the institution.

(3) Apprenticeship in such an institution is different from apprenticeship under an employer.

(4) There was no violation of principles of natural justice as the action was taken after full enquiry.

(5) The Court would not advise or suggest a lesser punishment if authorities think a particular punishment would be necessary to maintain the discipline.

Remarks: Appeal dismissed.

17. Citation of Case: Harbans Singh v. Punjab University
A.I.R. 1964. Punj. 456.

The High Court/The S.C.: Punjab.

The Judge who delivered the majority judgment: I.D. Dua

Brief facts and arguments: The applicant's candidature and result of the examination at which he had already appeared were cancelled and he was disqualified for a year. This step was taken by the University on the report of the Principal of his College that he had misbehaved with a girl.

The appellant was also an employee in a judicial office. The statement of the appellant was

recorded by the Principal but the appellant had refused to cross-examine the girl or her tutor who had recognized the appellant on the spot or where the misbehaviour was committed.

The appellant contended that the University's order was arbitrary and opposed to principles of natural justice.

Summary of the decision: The Court held that the University had acted on the Principal's report under University Regulations, hence the action was in accordance with the law.

Further, the allegations were such that there was no reasonable ^{ground for the appellant to} claim his ignorance. On facts of the case, he was not deprived of the opportunity to present his case. There was no failure of the essential rule of natural justice.

A fair and adequate opportunity was given to him to rebut or explain his case; that is what is expected in such cases from bodies like University.

The Court, however, expressed its views for the desirability of training precise and definite rules of procedure to conduct such enquiries.

Remarks: Petition dismissed.

University Election Cases

1 Citation of Case: Surendra Mohan v. Gopal
Chandra A.I.R. 1952 Orissa 359.

The High Court/The S.C. Orissa

The Judge who delivered the majority judgment: Paningrahi J. (on difference of opinion between Jagannadha Das J. & Narasimham J) Panagrani J. agreed with the C.J.

brief facts and arguments: This was an application for a writ of Quo-Warranto against the V.C. and certain fellow of the Utkal University, challenging the election of some of them to the Senate of the University.

The application arose out of the requirement in S. 12 of the Utkal University Act, which provides for the compulsory retirement of one fifth of the elected Fellows of the Senate in rotation at the end of each year.

The dispute between the contestent parties related to the power of the V.C. to cancel the previous balloting and to the correctness of the number of fellows who should have been balloted out at the second balloting.

The points debated before the two judges and repeated before Paningrahi J.

(i) whether the number to be taken for purposes of balloting out is nine or eight, so as to represent one-fifth of the elected Fellows;

(ii) whether the Vice-Chancellor was right in cancelling the first ballot held and holding a second ballot.

Summary of decision: The Court observed:

1. The point in controversy is whether the one-fifth of elected Fellows to be balloted out under Section 12 of the Utkal University Act is to be calculated with reference to the 43 elected Fellows provided for in sub-section (3) of sec. 8 of the Act, or with reference to the 41 elected Fellows who had actually been returned.

In my judgment "one-fifth of such Fellows" in the opening paragraph must necessarily mean more than one-fifth of the Fellows actually elected as 12 of the Act speaks of all the elected Fellows and not only of some of them actually elected before a particular time. The expression "shall not exceed one-fifth of the number of such Fellows" occurring in the proviso emphasises this and fixes the maximum limit.

The contention of the petitioner rejected.

(2) Where the Vice-Chancellor discovers that the balloting out carried out by him was wrong he has power to hold *suo motu* a second balloting out. The principle of Law that should be applied is that if the law enables something to be done it gives the power at the same time to do every thing that is indispensable for the purpose of carrying out the object in view. That power subsists until the purpose is accomplished. '*ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest*'. When anything is granted, that also is granted without which the thing granted cannot exist.

In the absence of any specific provision to the contrary it cannot be said that the act of the Vice-Chancellor in holding another balloting out is either void or illegal. Even if it be considered to have been an error it is an excusable error which could be rectified by the wrongdoer himself and not a culpa gravis justifying the interference of the Court.

(3) The Vice-Chancellor's in cancelling the first and holding the second ballot is not a "proceeding" of the University which falls within the purview of the powers of the Chancellor under S.5(6) so that it can be annulled by the Chancellor. Even assuming it to be so, it cannot be said that it was not in conformity with the Act or the statutes, as neither the Act nor the statutes lay down how he is to perform the act. The power to annul is no doubt lodged in the Chancellor but there is no authority for the view that the University cannot annul its own proceedings.

(4) Any dispute with regard to the election of any person to be a Fellow of the Senate has to be decided by the Chancellor and that power is vested in him by section 5 of the Utkal University Act. Any dispute regarding election has, therefore, to be referred to the Chancellor and his decision in the matter is final. It is not the function of the Court of law to say whether that decision of the Chancellor is correct unless that order is attacked on the ground of vires or bona fides.

Remarks: The petition was dismissed.

2. Citation of Case : Harikrishna v. Patna
University A.I.R. 1952 Pat.
463

The High Court/The S.C. Pat.

The Judge who delivered
the majority judgment Imam & Sinha JJ.

brief facts and arguments: The petitioner-applicant who was a laboratory assistant in an affiliated college of the Patna University, was dropped from the electoral roll, prepared under the Bihar Act, XXV of 1951, for election of the Class III representatives members clause (i) under the Act for the Senate.

Under the new act he was not considered as a "teacher".

His contention was that he had the right to be on the list of voters having regard to the provisions of the Bihar Act XXV of 1951.

Summary of decision: The Court held: A laboratory assistant may be a person imparting instructions and, if so, may be regarded as a "teacher" under the definition. But there is a clear distinction between being a "teacher" within the definition and being a teacher of the "teaching staff" of a college or University department. Therefore a laboratory assistant who is not a member of the teaching staff of a college cannot claim to be entitled to be put on the list of voters for the clause (1) Representatives members clause (i) under the Act.

Remarks: The application was dismissed.

3. Citation of Case: Ram Kumar v. Punjab University,
Solan A.I.R. 1954 Punj. 253

The High Court/The S.C. Punj.

The Judge who delivered
the majority judgment: Harnam Singh J.

Brief facts and arguments: The petitioner was defeated in University elections of the Punjab University and had filed a petition within Regulation 24 made under the Act (University Act) which was dismissed.

He, then, filed a petition under Art 226 of the Constitution for declaration of election of certain candidates as void.

Summary of decision: The Court held: The Punjab University Solan, was not within the territories in relation to which Punjab High Court exercised jurisdiction, the Punjab High Court was not competent to proceed with the application.

Remarks: The application was dismissed.

4. Citation of Case: Ishwari Prashad v. All.
University A.I.R. 1955 All.
131.

The High Court/The S.C. All.

The Judge who delivered
the majority judgment Mootham J.

Brief facts and arguments: Prof. Dr. Ishwari Prasad was Head of Department of Political Science in the Allahabad University; 'ex officio' he was member of the Court. As a member of the Court he was elected to the Ex. Council.

before he retired from the service, he was appointed by the Chancellor, under his powers, as a member of the Court for the residue of the term of office of Sri K.L. Misra, This appointment was to be effective since the date of his retirement.

The question then arose whether the petitioner continued to be a member of the Executive Council after the date of his retirement, under Cl.(ii) of the first Statute with the proviso. The matter was referred by the Vice Chancellor to the Chancellor under S. 42 of the Act. The Chancellor by an order decided that the petitioner was not entitled to continue as a member of the Executive Council.

It was contended that the decision of the Chancellor was erroneous, and the prayer was made for a writ of certiorari to quash the order.

Summary of decision: The Court observed:

In the case of a member of the Executive Council, who comes under Head (i) of the first statute, what the proviso lays down is that he shall hold office as a member of the Executive Council for so long only within the period of three years as he continues to be a member of the Court. Unless there has been a break in the continuity of his membership of the Court he is entitled to be a member of the Executive Council. Even if the status of the member changes during his period of membership nevertheless he continued to be a member of the Executive Council; the capacity in which the person concerned is a member of the Court is not material.

The High Court is always reluctant to interfere in matters relating to the management of educational bodies. The Courts discretion must however be exercised on judicial principles, and if there is nothing in the conduct of the petitioner which disentitles him from the relief which he seeks, Certiorari cannot be refused on the ground that the matter is especially a University matter and the order was made in good faith and that the harmonious working of the University requires the unquestioning acceptance of the decision of the Chancellor. The expressions "duly elected or appointed" and "entitled to be" in S. 42 clearly refer to the legal rights of the person concerned under the Act and Statutes made under the Act and, therefore, the section imposes on the Chancellor the duty to act judicially in arriving at his decision. The Chancellor acting in the exercise of the powers conferred upon him by S. 42, therefore, constitutes in Law a Tribunal subject to the High Court's Superintendence.

The Chancellor's order quashed. Writ of certiorari issued.

Remarks: The petition was allowed.

5. Citation of Case: Registrar, University v. Ishwari Prasad. A.I.R. 1956 All. 603

The High Court/ All.
The S.C.

The Judge who Mehrotra J.
delivered the
majority judgment

brief facts and arguments: This was the appeal against the judgment of the single judge in the above case.

The contentions were (1) The Chancellor, while exercising his power was not acting as Tribunal (2) There was no 'error apparent on the face of the record.'

Summary of decision: The Court observed:

The contention that in cases where the inferior tribunal has, in the opinion of superior tribunal, incorrectly interpreted any statute, it will only be a mere mistake of law and cannot be regarded as an error apparent on the face of the record, cannot be accepted as a test which can be applied in all cases; it cannot also be accepted as correct.

An erroneous interpretation of the provisions of a statute may be considered by the superior Court as an "error apparent on the face of the record."

Hence, in the case of a decision given by the Chancellor of a University it is open to the High Court to examine the order of the Chancellor which is a "speaking order," to consider the interpretation which he places on the statute and reason therefor which he gives and, on finding that he misinterpreted the relevant provisions of the statute, to quash his order in the exercise of its power of certiorari.

The contention that the final jurisdiction given to the High Court and the Supreme Court to determine the law of the land does not apply to the cases where the law which is determined is a law which is liable to be changed by the domestic authorities and is not an enactment of any Legislature cannot be accepted as no such distinction can be drawn. Any order passed by such an authority resulting in objecting the right of a person is subject to the supervisory jurisdiction of

of the High Court.

Per Kidwai J. : In giving the meaning to the words "error apparent on the face of the record" the emphasis is not upon the word "error" but upon the words "apparent on the face of the record" that is to say that error must be such as can be ascertained from the record as it exists or should exist.

Remarks: The appeal was dismissed.

6. Citation of Case: Phool Chand Sethi v. Nagpur University A.I.R. 1957 Bom.215

The High Court/The S.C. Bom.

The Judge who delivered the majority judgment Mudholkar J.

Brief facts and arguments: The petitioner's nomination papers were rejected by the Registrar, because they were found to be enclosed in an envelope not-sealed with a sealing wax but with gum.

It was contended that the rule required merely the sealing and not sealing with wax.

It was contended on behalf of the respondents, that under S. 40(1) of the Nagpur University Act the petitioner should have first availed the Chancellor's jurisdiction to hear his petition.

Summary of decision: The Court held:

The word "sealed" in the Election Rules means "stamped with a seal" and not "closed by gum", ... the requirement of sealing with wax is not such that noncompliance with it would justify so serious a consequence as the rejection of a nomination paper not sent in a sealed cover.

Under S. 40(1) of the Act, he had a right of appeal to the Chancellor. Bearing in mind that the University is an autonomous body it is all the more necessary for a person aggrieved by the decision of any subordinate body of the University to avail himself of the remedy provided by the Act itself. It was therefore obligatory upon the petitioner to present an appeal to the Chancellor.

Remarks: The petition was dismissed.

7. Citation of Case: Rajendra Kumar v. State of M.P. A.I.R. 1957 M.P. 60

The High Court/The S.C. M.P.

The Judge who delivered the majority judgment Nawaskar J.

Brief facts and arguments: The M.B. Vikram University Act 1955 was to come in operation from the date to be notified by the Government in the Gazette. But no such notification was issued. Yet, the Vice-Chancellor, Assistant Registrar and few other officers of the University were appointed by the Rajpramukh, the Chancellor. The Special Officer by notification invited graduates to get themselves registered. 176 graduates, including the petitioner got themselves registered. Thereupon the Assistant Registrar invited the registered graduates to file their nomination papers for that year's election of six members of the Senate. The petitioner had also stood as a candidate for the election.

The petitioner, however, challenged the validity of all the appointments, as made without authority of law, since the University Act had not come in force in absence of the required notifications in the Gazette. He further

contended that due to the defect the petitioner was likely to be deprived of the votes of many graduates who might have abstained from getting themselves registered on the belief that the Act had not come into force.

Summary of decision: The Court held:

When by an Act of Legislature power is conferred upon the Government to appoint a day from which the Act would come into force the Act becomes an existing law and at least the provision regarding the commencement of the Act comes into force on its passing and any other construction will lead to a stalemate.

S. 45 specifically empowers the Chancellor to act for specified purposes from the date of passing of the Act. A Chancellor cannot act as such unless the existence of his office is assumed to come into being from the date of passing of the Act. Hence the provision regarding the existence of office of the Chancellor and the powers he is entitled to exercise under S. 45 taken by itself it cannot be said that it is operative from the date of passing of the Act.

(2) It therefore follows there is no illegal assumption of office by the Chancellor. However, S. 45 contemplates only such actions which are necessarily of a preparatory character. The words in S. 45 are not wide enough to include appointment of officers who are to perform functions under the Act after the Act comes into force.

Therefore, the appointment by the Chancellor of the Vice-Chancellor and the Registrar or Assistant Registrar could not take effect until the Act comes into force,

and that the action pertaining to the registration of graduates and holding of election to the Senate were invalid as the Act had not come into force except Ss. 8 & 45 of the Act.

(3) Where the person seeking to object to the validity of election not only takes part but waited till he was defeated and then turns round to challenge the validity of that Act, he should not be allowed to do so.

On facts that registration of the relator under the Act and standing for University election were only preparatory steps and that as the election had not taken place he could not be said to have acquiesced in the proceedings so as to disentitle him to the writ.

Remarks: The petition was allowed.

3. Citation of Case: Ajoy Kumar v. Saila Behari
A.I.R. 1957 Orissa 159.

The High Court/The S.C. Orissa

The Judge who delivered the majority judgment: P.V.B. Rao J.

brief facts and arguments: The petitioner had challenged the validity of election of Fellows from the graduates constituency. The ground for challenging the validity was that the elections were held under the notification, issued by the Registrar, and under the notification reservations were made for candidates belonging to merged territories. The petitioners also alleged that similar reservations were provided for by S. 8(3)(iv) of the Utkal University Act and the Act in Law 9(3)(c).

Such classification, the petitioner contended, was hit by Art 14 of the Constitution, hence the elections were also invalid. They prayed for a writ of Quo-Warranto

against the elected Fellows and writ of mandamus against the University authorities for washing the elections.

Summary of decision: The Court held:

(1) The petitioners never contested for a seat in the Senate, did not file any nomination paper and had nothing to do with the election except being on the roll of the registered graduates of the University. Though they are entitled to file an application for a writ in the nature of quo-warranto they are not in any way prejudiced by the elections held by virtue of the notifications issued by the Registrar, according to the rules and forms prescribed by the statutes. They are not also residents of the merged States so as to come under the category of persons aggrieved. The elections are already held. The persons elected to represent the merged territories, not only belong to the merged States but also resides in the merged States and represents the merged States.

We do not think we should exercise our discretions under the circumstances present in this case to issue such a writ.

(2) Under Art 15(4) of the Constitution, the State is not prevented from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes or Scheduled Tribes. As already stated the object of the University under the Act is also for making provision for imparting education. There is thus a nexus between the classification and the object of the Utkal University Act, which is impugned.

Therefore, S 1-A (which had extended the territorial limits of the University) is not hit by Art 14 of the Constitution.

The Court observed some inconsistency with the Statutes framed in connection with S. 8(3)(iv) of the Act and also with the forms prescribed and the notification issued by the Registrar, and advised to alter them to bring in consistency with the object of S. 8(3)(iv) of the Act in unambiguous terms.

Remarks: The application was dismissed.

9. Citation of Case:

Dr. Prem Nath v. Lucknow University A.I.R. 1959 All. 618

The High Court/The S.C.

All.

The Judge who delivered the majority judgment

R.N. Gurtee J.

Brief facts and arguments: Two questions were involved in the petition, viz, (1) Determination of seniority (2) Right to Deanship in view of the Lucknow University Act 1920, Statutes of 1956 and 1958.

The petitioner was officiating as a Professor of Physics prior to D's appointment as a permanent and substantive professor of Botany and it was subsequent to D's appointment that the petitioner had applied for appointment to a substantive post and was so appointed.

Summary of decision: The Court held:

(1) that although according to the old Statutes of 1956 the term of officiating professorship could be tacked on the terms of a permanent professorship and the petitioner being senior most professor he was entitled to become Dean, he had no claim on his post until he was appointed

substantive Professor. Therefore, he was not senior to Dean when the new Statutes of 1958 came into force.

(2) that the office of Dean had been created not under the Statutes but under the principal Act of 1920 itself. The Statutes of 1956 or 1958 nowhere say that the rights of Deanship which came into existence under the 1956 Statutes would come to an end as soon as the 1958 Statutes came into force and the 1956 statutes stood rescinded. The subsequent rescinding of Statutes of 1956 would not by implication destroy a right which had become vested in the petitioner. The emergency power under S. 11(7)(8)(9) and (10) did not authorise the Vice-Chancellor to cut down the term (3 years) of Deanship in anticipation of the then Statutes of 1956 coming to an end. R. 211 of the new Statutes could not be interpreted that the Deanship would be deemed to constitute a term already fully held under the new Statutes irrespective of whether the full period had not run out and that a person would not be entitled to be Dean once again until other professor heads had become Deans in their own turn. Hence the petitioner was still Dean.

Remarks: The petition was allowed.

10. Citation of Case: Prem Narain v. State of U.P. A.I.R. 1960 All. 205

The High Court/The S.C. All.

The Judge who delivered the majority judgment: V.D. Bhargava J.

Brief facts and arguments: The three petitioners were members of the Lucknow University Executive Council, each holding his post for 3 years, under the University Act 1920. Under the amendment by Lucknow University Act 1955

alongwith the amendments by Removal of Difficulties Orders issued by the Govt., the periods of their memberships were determined in advance to the due dates.

The petitioners had challenged the validity of the Removal of Difficulties Orders. While their cases were in pending before the Court and they were continuing in office due to interim orders issued by the Court, the Governor had issued U.P. Universities Ordinance No. 1 of 1959, validating all the Removal of Difficulties Orders.

Summary of decision: The Court held:

(1) The validity of U.P. Ordinance of 1959 cannot be challenged on the ground that it is hit by Art. 213 Proviso (C) read with Art 200 Proviso. This Ordinance in no way purports to affect the powers of the High Court. It may have affected the rights of a party before the High Court, but the powers of the High Court have remained the same. If an Act is passed during the pendency of a case which affects the rights of the parties, it cannot be said that there has been any derogation from the powers of the High Court which by the Constitution it is designed to fill.

The Governor's satisfaction as to existence of the circumstances necessary to promulgate the Ordinance cannot be questioned in a Court of law, under Art. 213.

Simply because an Ordinance had been passed when the legislatures were not in session or because it might affect the rights of parties in a pending litigation would be no ground to hold that the Ordinance was a mala fide one.

Unless a Legislature makes an Act specifically retrospective, it shall not affect an existing vested right and if according to the interpretation the Ordinance has not only impliedly and by its intention but expressly taken away the rights retrospectively, then, by no manner of interpretation of Statutes, it can be said that the vested rights have been preserved.

(2) Universities are autonomous bodies and the Courts should be reluctant, as far as possible to interfere with the internal administration of the University. There should be no occasion for any interference unless there is a palpable violation of law, which has occasioned in justice in a broad and general sense.

(3) In the circumstances of the case the petitioners were not entitled to any relief against termination of their membership of the University body especially when the granting of any relief would be virtually ineffective and merely of academic interest.

Remarks: The petition were dismissed.

11. Citation of Case: Satya Narayana Rao v.
T.S. Rao S.I.R. 1960 A.P. 337

The High Court/The S.C. A.P.

The Judge who delivered the majority judgment: P. Chandra Reddy C.J.

Brief facts and arguments: The petitioner had filed the petition to quash the order of the District Panchayat Officer, Khanaman, accepting nomination of the second respondent for election to the Senate of the Osmania University from the Local Bodies Constituency.

The ground for the petition was that the nomination

papers filed by the respondent 2, were incomplete and did not conform to the requirements of the notification, that he had not made a separate declaration, in writing, agreeing to serve on the Senate.

Summary of decision: The Court held that :

He should, in addition, annex a separate declaration agreeing to serve on the Senate if elected. We do not think this contention is sustainable on the language of paragraph 2 of the notification. All that the notification requires is that the nomination would be made by an elector in writing and it should be seconded by another elector in writing.

Nor is it an essential requisite that he should write there that he agrees to serve on the Senate if elected. That clause only indicates that the nominee should be willing to be a member of the Senate.

It is to be borne in mind that when the second respondent has indicated his acceptance of nomination by signing in the nomination form, there is a substantial compliance with that requirement. Failure to observe strictly this condition cannot lead to rejection of the nomination paper because the Returning Officer is authorised to reject the nomination papers only in circumstances which are indicated in paragraph 4 of the notification.

Remarks: The petition was dismissed.

12. Citation of Case: Kasturbhai Lalbhai v. Gujarat University
A.I.R. 1960 Puj. 14

The High Court/the S.C: Gujarat

The Judge who delivered the majority judgment: S.T. Desai C.J.

Brief facts and arguments: The petitioner and other members of the Senate had submitted a resolution to be considered by the Senate.

The resolution was to request the State Govt. and the State Legislature to extend the period from 10 years to 20 years for change over to Gujarati medium for teaching at affiliated colleges.

When the resolution was under consideration at a Senate meeting, the second respondent the Vice-Chancellor upheld point of order that the proposed resolution was not in accordance with Statute 22 and directed the meeting to proceed with other business on the agenda.

The Court posed for itself the problem thus:

Whether it is within or without the ambit and scope of the powers of the Senate to discuss, and if the majority of members so decide, to pass a resolution requesting the State Government and the State Legislature to amend Sec.4 of the Act in the manner suggested. The other question that arisesis whether it was the duty of the second respondent to allow discussion on the resolution, and if so, whether this court in exercise of its discretion, should direct a mandamus in that behalf as prayed for by the petitioners"

Summary of decisions: The Court held:

(1) The power to make a recommendation or request to the State Government or State Legislature of the nature under consideration, must be regarded as something incidental to and consequential upon the things which the Senate is empowered to do under the Act"

(2) The duty of the Vice-Chancellor to allow introduction of and discussion by the Senate is an absolute duty. It is not a matter of discretionIt is obvious from the language of the relevant provisions of the Act and the Statutes, including Statutes 22 that it is within the competence and powers of the Senate to entertain and discuss any matter connected with the University so long as it is in accordance with the Act. In our judgment, all matters, however diverse they may be, logically or naturally connected with and germane to the subject and object of the Act must properly be regarded as being in accordance with the Act

(3) A mandamus will issue against the respondents requiring them to treat the ruling of the second respondent as void and ineffective, and directing them to continue the requisitioned meeting of the Senate held on 28th June 1960 for consideration and treating the said resolution as in order

Remarks: The petition was allowed.

13. Citation of Case: J. Venkataswamy v Correspondent K.G. Basic Senior School A.I.R. 1961 A.P. 178

The High Court/The S.C: A.P.

The Judge who delivered the majority judgment: Basi Reddi. J.

Brief facts and arguments: The petitioner was a permanent head master of a basic school, while his services were terminated by the correspondent purporting to Act under Rule 13(2)(ii)(b) under Madras Elementary Education Act 1920.

The order, though originally unratified by the Educational Officer and the Divisional Inspector, was later reversed and confirmed on behest from the Government.

Summary of decisions: The Court observed:

Both these officers who, when exercising their statutory functions as appellate authorities had condemned the action of the 1st respondent, now went back on their previous decision and condoned her action because they were told to do so by the Government. It is difficult to see how the action of the Government and the resultant 'volte face' of its departmental subordinates can, with any show of reason, be justified although in the counter affidavits filed on behalf of respondents, it is claimed that 'the Government and the D.P.I. have power in appropriate cases to give directions to their subordinates in the exercise of their official and administrative duties.' It is apparent from the foregoing narration that the petitioner has been denied the essentials of justice and fairplay. The statutory rules, designed to ensure the fundamentals of fair hearing, were disregarded; but the Govt. has thought fit to condone and ratify the improper action of the 1st respondent. Those rules as much binding on the Govt. as on any one else; they may not be abrogated at will by executive fiat. That indeed is one of the basic principles underlying the concept of the Rule of Law, and that principle has been lost sight of in this case.

In the result the writ petition is allowed and the ordersquashed.

Remarks: The petition was allowed. It is a case of termination of service, and not an election case.

14. Citation of Case: C.Pirchaiah v. Andhra University

A.I.R. 1961 A.P. 465

The High Court/The S.C: A.P.

The Judge who delivered the majority judgment:

P. Chandra Reddy C.J.

Brief facts and arguments: The petitioner was elected to the Senate from the local bodies' constituency. The unsuccessful candidate made an appeal to the Chancellor complaining that the Returning Officer had improperly rejected some of the votes cast in his favour. The Chancellor being of the opinion that the grounds of invalidation of the votes were improper, set aside the election of the petitioner and under a fresh election to be held. Before taking the final decision the Chancellor had not issued any notice to the petitioner, the successful candidate in the election.

Violation of principles of natural Justice was alleged.

Summary of decisions: The Court observed:

The University Code does not require in express terms that notice should be issued, an obligation to give an opportunity on the part of the authority hearing the appeal is to be implied.

It is of the essence of Justice and equity that a person should not be deprived of his property or the right or privilege without being given an opportunity to show cause against it. The Chancellor, though not a Judge in the real sense of the term but constituted only an administrative authority, exercise quasi-judicial functions in deciding whether a person was duly elected or not. Therefore, he should observe the Judicial process. Even an administrative authority, when he acts in quasi-judicial capacity has to conform to the forms of judicial procedure.

The party affected is entitled only to make his representations. (which may not be a personal hearing).

The order of the Chancellor quashed.

It is, however, open to the Chancellor to decide the dispute afresh after giving an opportunity to the petitioners.

Remarks: The petition was allowed.

15. Citation of Case: Darbara Singh v. Punj. University AIR
1961 Punj. 194.

The High Court/The S.C: Punj.

The Judge who delivered the majority judgment: A.N. Grover J.

Brief facts and arguments: The petitioner, a candidate for election as a fellow of the Punjab University submitted his nomination paper duly proposed and seconded on the prescribed form in a registered cover to the Registrar of the University, the Returning Officer. The nomination was however held invalid by the Registrar on the ground that it had not been addressed by name to the Returning Officer as required by regulation 24(ii) framed under the Punjab University Act.

Contentions raised by the respondents: (1) The petitioners could not invoke the special jurisdiction of Art 226 because elections had not taken place as yet, and that they had under Regulations 24(xvii) a right to challenge the election before a Tribunal. (2) Regulation 24(ii) made under Sec 31(2)(a) (of the Punjab University Act, was mandatory.

Summary of decisions: The Court observed: (1) If the sole right to examine and determine all matters with regard to the elections to a particular body is conferred on some special tribunal, then normally it is that tribunal alone which will have the jurisdiction to determine those matters.

It cannot be said that this Court will not have jurisdiction under Art. 226 to interfere if a proper case

is made out for its interference. It is entirely a different matter that while exercising discretion, this Court must bear in mind the existence of such a tribunal to which normally resort should be had before any relief is granted under Art.226.

(2). (After a perusal of corresponding provisions in the Representation of the People Act and case law on the point the Court came to the conclusion:)

After all the whole intentions and objects of the provision in regulation 24 about the nomination paper being forwarded to the Returning Officer. If the Registrar is the Returning Officer, and the cover is addressed to him and it is received by him, there has been substantial compliance though technically and literally it may be said that the requirement had not been satisfied the provision in regulation 24 is merely of a directory nature and is not mandatory.

As such the petition must succeed.

Remarks: The petition was allowed.

16. Citation of Case: Nand Kishore V. B.N. Rai A.I.R. 1963
Patna 394.

The High Court/The S.C: Patna

The Judge who delivered the majority judgment: V. Ramaswami C.J. and
N.L. Untwalia J.

Brief facts and arguments: The petitioner was a duly elected member and Secretary of the Governing Body of the S.U. College Hilsa. Before the expiry of his term (27.9.1959 to 31.5.1962) he filed a writ petition on 23.1.1962 for quashing certain order of the Vice Chancellor of the Patna University, dated on 17.1.1962 approving the elections of the respondents to the governing body. for the next term. The application was admitted

and on the same date an order of stay was issued restraining the respondents from holding any meeting.

There was another similar order of stay passed in another proceedings started by the respondents against the petitioner.

The question whether the petitioner had any locus standi at all to seek a writ petition was contested by the respondents.

Summary of decisions: The Court held: (1) the legal effect of these two stay-orders was that no meeting could be called by the Governing Body for election of a new Secretary after the expiry of the term of office of Shri Nand Kishore Agrawal. In other words, Shri Nand Kishore Agrawal continued to be, in the eye of law, the Secretary of the Governing Body so long as the writ applications are pending in the High Court, in spite of statute XIII, Paragraph 2(2) cl.(c). In the special circumstances of the case, therefore, Shri Nand Kishore had locus standi to prosecute the writ application.

(2) If any meeting of the Governing Body was held it was an illegal meeting and the election of the new members of the Governing Body was illegal.

Remarks: The writ petition was allowed.

17. Citation of Case: S.P. Singh v. Chancellor, Bhagalpur University AIR 1964 Patna 162.

The High Court/The S.C.: Patna.

The Judge who delivered the majority judgment: N.L.Untwalia J.

Brief facts and arguments: The petitioner, a teacher was declared elected as a member of the Bhagalpur University Senate from the teachers' Constituency of Saharsa College. Respondent No.4, his rival candidate who had objected to a certain candidate voting in the election, after initially applying to the Registrar made an application to the Vice Chancellor for an investigation of the Case.

A Committee was constituted to enquire into the same and on its recommendations the Chancellor made an order quashing the petitioner's election. It is this order the petitioner challenged in his petition under Art. 226.

His main contention was that the Respondent No.4 had not lodged with the Registrar of the University a written notice of the objection specifying the grounds upon which he questioned the validity of the election within 7 days of the publication of the result of the election as required by paragraph 10(1) of Chapter III of the Bhagalpur University Statutes. Hence the reference by the Vice Chancellor to the Chancellor under S.52 of the Act was ultra vires and invalid that being so the Chancellor had no jurisdiction to set aside the election.

Summary of decisions: The Court held: The fact that respondent No.4 intended to question the validity of the election was prominent in his mind when he filed the petitions (to the Registrar) dated 31.11.62 & 17.11.62 is irrelevant. The intention or motive is of no consequence in this case There is no doubt in my mind that in the eye of law it was so

done for the first time by the petitioner dated 21.11.1962 beyond the time ...

It is well known principle of law that, if a Statute directs a thing to be done in a particular way, that thing shall not, even if there be no negative word, be done in any other way. The Chancellor, in my opinion, gets jurisdiction to decide an election dispute only upon a valid reference. The reference by the Vice-Chancellor was invalid because the dispute was raised and the validity of the election was questioned by respondent No.4 beyond 7 days of the publication of the result. By a patently erroneous decision in that regard, the Chancellor assumed jurisdiction upon an invalid reference. In result the order of the Chancellor dated 18.5.63 is ultra vires and without jurisdiction and must be quashed by a grant of a writ in the nature of certiorari under Art.226.

Remarks: The petition was allowed.