Dr. Akshaibar Lal And Others vs The Vice-Chancellor, Banaras ... on 10 January, 1961

Equivalent citations: 1961 AIR 1059, 1961 SCR (3) 380, AIR 1961 SUPREME COURT 619, 1961 3 SCR 386 ILR 1961 1 ALL 710, ILR 1961 1 ALL 710

Author: M. Hidayatullah

Bench: M. Hidayatullah, J.L. Kapur, J.C. Shah

PETITIONER:
DR. AKSHAIBAR LAL AND OTHERS

Vs.

RESPONDENT:
THE VICE-CHANCELLOR, BANARAS HINDUUNIVERSITY, AND OTHERS.(an

DATE OF JUDGMENT:
10/01/1961

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
KAPUR, J.L.
SHAH, J.C.

CITATION:
1961 AIR 1059 1961 SCR (3) 380
CITATOR INFO :
RF 1965 SC 59 (6)
D 1967 SC 383 (10,14)

ACT:
Banaras University--Disciplinary action against employees-Enactment providing for special procedure--Enactment, whether supersedes earlier Procedure or agreements--Banaras Hindu University Act, 1915 (16 of 1915), s. 18-Ordinance No. 6-Banaras Hindu University (Amendment) Act, 1958 (34 of 1958), Statute No. 30, as amended.

HEADNOTE:
On June 14, 1958, the President of India promulgated an Ordinance to amend the Banaras Hindu University Act, 1915. By s. 8 of the Ordinance, the Statutes of the University

were amended, and in place of Statute NO. 30, another statute was substituted, which set up a " Screening Committee " to examine the cases of all persons holding teaching, administrative or other posts in the University at the commencement of the Ordinance, in respect of whom there was reason to believe that their continuance in office would be detrimental to the interests of the University, and to forward its recommendations to the Executive Council to take such action as it may deem fit. The Ordinance was repealed by the Banaras Hindu University (Amendment) Act, 1958, which re-enacted Statute No. 30. Under the re-enacted Statute before any action could be taken by the Executive Council as referred to above, the matter had first to be referred to the Solicitor-General of the Government of India, who, if he was of the opinion that there was prima facie case for inquiry, shall refer the case of the person concerned to a committee, known as the Reviewing Committee. On receipt of the recommendations of the Reviewing Committee, the Executive Council was to take such action thereon as it thought fit, after giving the person concerned a reasonable opportunity for being heard. Apart from Statute No. 30, added by Parliament, the Executive Council could terminate the engagement of an employee by taking action under the terms of the agreement, where such agreement existed, or under Ordinance No. 6, framed under the Act, without assigning a cause, on four months' notice or four months' salary in lieu of notice.

The cases of the appellants who held posts under the University were considered in accordance with the procedure laid down in Statute No. 30 by the Solicitor-General who then sent up their cases to the Reviewing Committee. The appellants appeared before the Committee and made their representations. The Committee sent its findings in respect of the appellants except one to the Executive Council who then called upon four of them to show cause why their services should not be terminated, in view of the

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findings of the Committee that the continuance in office of those appellants was detrimental to the interests of the University. No notices, however, were sent to appellants 2, 4, 5 and 6. Appellants 1, 3, 7 and 8 having filed petitions in the High Court of Allahabad under Art. 226 of the Constitution of India for relief against the proposed action and proceedings having been stayed, the Executive Council passed a resolution, No. 89, on May 15, 1960, that the consideration of their cases was postponed till after the writ petitions were disposed of by the High Court. On the same day, however, the Executive Council passed resolutions, Nos. 90, 94 to 96 and 99 to 102, terminating the services of all the appellants giving them four or six months' salary in lieu of notice. The appellants challenged the validity of the resolutions on the grounds, inter alia, (1) that the Executive Council could not take recourse to the provisions

of Ordinance No. 6 having started action under Statute NO. 30, (2) that Ordinance No. 6 was subordinate to Statute NO. 30 and could not prevail where Statute NO. 30 applied, (3) that action against respondents 1, 3, 7 and 8 was stayed by the High Court and resolution No. 89 and that any action thereafter under the agreement or Ordinance No. 6 was incompetent, and (4) that, in any case, the action of the Executive Council was mala fide and a fraud upon the University Act and Statute NO. 30. The case for the University authorities was that the Executive Council could take action under the terms of the agreements, where such agreements existed or under Ordinance No. 6 or Statute NO. 30 at its option, and that where alternative remedies were provided by law, all or any of the remedies could be invoked:

Held, that the impugned resolutions were ultra vires and should be quashed.

The power of terminating services without notice could not be invoked in the present case, where allegations of conduct detrimental to the interests of the University had already been made and scrutinised by the Solicitor-General and the Reviewing Committee and the matter was pending before the Executive Council. The powers granted by the Ordinances were expressly subject to the Statutes, and the Ordinances could not prevail over the Statutes.

State of Keyala v. C. M. Francis and Co. [1961] 3 S.C.R. 181, distinguished.

The words " shall take such action thereon as it may think fit " in Statute No. 30, gave liberty of action on the recommendations of the Reviewing Committee but lay a duty to form an opinion. The words did not give a discretion to take action outside the Statute.

The action taken by the University authorities could only be questioned if it was ultra vires and proof of alien or irrelevant motive was only an example of the ultra vires character of the action. The court was not concerned so much with the motives,

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nor even with the justice of the action taken by a public body, like the University, as with its legality.

Short v. Poole Corporation [1926] Ch. 66, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 480 to 487 of 1960.

Appeals by special leave from the judgment and order dated July 15, 1960, of the Allahabad High Court in Civil Misc. Writ Nos. 1554, 1561, 1553, 1560, 1556, 1558, 1559 and 1557 of 1960.

N....C. Chatterjee, R. K. Garg, S. C. Agarwal, D. P. Singh, K. K. Sinha, V. A. Seyid Muhamad and M. K. Ramamurthi, for the appellants (in C. As. Nos. 480 and 481 of 60). R....K. Garg, M. K.

Ramamurthi, S. C. Agarwal, D. P. Singh, V. A. Seyid Muhamad and K. K. Sinha, for the appellants (in C. As. Nos. 482 to 487 of 60).

G. N. Kunzru and I. N. Shroff, for the respondents. 1961. January 10. The Judgment of the Court was delivered by HIDAYATULLAH, J.-These are eight appeals against the judgment and " decree " of the High Court of Allahabad dated July 15, 1960, with special leave granted by this Court. By the writ petitions, which failed before the High Court, the appellants had asked that Resolutions Nos. 90, 94 to 96 and 99 to 102 passed by the Executive Council of the Banaras Hindu University on May 15, 1960, terminating their services from June 1, 1960, be quashed. The names of the appellants, the posts they held and the gist of the Resolutions passed against them have been set down below :

Group I

1. Dr. Akshaibar Lal: Reader in College of (C. A. No. 480 of 1960) Agriculture.

(Resolution No. 100-4months' pay in lieu of notice)

2. Dr. Gopal Tripathi Professor of Chemi-

(C. A. No. 482 of 1960) cal Engineering and Principal, College of Technology.

(Resolution No. 101-4months' pay in lieu of notice)

3. Pandit Ram Vyas Pandey : Reader and Head of (C. A. No. 486 of 1960) Department of Jyotish-

Sanskrit Maha-

vidyalaya.

(Resolution No. 99---under cls. 4 and 7 of the agreement dated March 26, 1931, and Ordinance No. 6 of the Ordinances of the University-6 months' pay in lieu of notice)

4. Dr. Gauri Shankar Tiwari : Lecturer in Chemis- (C. A. No. 487 of 1960) (Resolution No. 102--4 months' pay in lieu of notice) Group II

5. Dr. Rain Deo Misra: Professor and Head (C. A. No. 481 of 1960) of Department of Botany, College of Science.

(Resolution No. 94-under cls. 4 and 7 of the agreement dated February 3, 1959, and Ordinance No. 6 of the Ordinances of the University---4 months' pay in lieu of notice)

6. Mr. Ganesh Prasad Singh: Lecturer in Physical (C. A. No. 483 of 1960) (Resolution No. 95-under cls. 4 and 7 of the agreement dated January 18, 1946, and Ordinance No. 6 of the Ordinances of the University-6 months' pay in lieu of notice)

7. Mr. Radhey Shyam Sharma: Lecturer, College of (C. A. No. 484 of 1960) Technology.

(Resolution No. 90-under cls. 4 and 9 of the agreement dated January 21, 1957, and Ordinance No. 6 of the Ordinances of the University-4 months' pay in lieu of notice)

8. Dr. Ram Yash Roy: Lecturer in Botany, (C. A. No. 485 of 1960) College of Science. (Resolution No. 96-under cls. 4 and 7 of the agreement dated August 12, 1932, and Ordinance No. 6 of the Ordinances of the University-6 months' pay in lieu of notice).

The cases of the appellants are very similar; but fall into two groups as indicated above. The differences are not many, and some of them are indicated in the gist of the resolutions noted against their names. Other differences will appear from the facts, which are given below. The affairs of the Banaras Hindu University, for reasons with which we are not concerned, had been deteriorating, and a situation had arisen which required intervention immediately. The President of India, in his capacity as Visitor and in exercise of the powers conferred by s. 5(2) of the Banaras Hindu University Act, 1915, appointed a Committee of Enquiry (known as the Mudaliar Committee) consisting of:

1. Dr. A. L. Mudaliar (President)

2. Mr. M. C. Mahajan

3. Dr. P. Subbarayan

4. Smt. Sucheta Kripalani

5. Dr. Nairoji Wadia (Members) to enquire into and report, inter alia, on the general state of discipline in the University, keeping in view the disturbances in some of the Institutions of the University, and to suggest remedies and measures of reform for the betterment of academic life and efficient functioning of the University. The Committee made a report suggesting that a "

Screening Committee " should be appointed to review the appointments made to the teaching staff and the work of the teaching staff, and that action should be taken in the light of the findings of the Screening Committee. On June 14, 1958, the President of India promulgated an Ordinance (IV of 1958) to amend the Banaras Hindu University Act, 1915. By s. 8 of the Ordinance, the Statutes of the University were amended, and in place of Statute No. 30, another Statute was substituted, which set up a " Screening Committee ", consisting of (a) a person who is or has been a Judge of a High Court (Chairman), (b) the Vice-Chancellor (Ex officio) and (c) a person having administrative or other experience in educational matters, to examine the cases of all persons holding teaching, administrative or other posts in the University at the commencement of the Ordinance, in respect of whom there was reason to believe that their continuance in office would be detrimental to the interests of the

University, and to forward its recommendations to the Executive Council to take such action as it may deem fit.

The Ordinance of the President was repealed by the Banaras Hindu University (Amendment) Act, 1958 (XXXIV of 1958), which re-enacted Statute No. 30 as follows:

" 30. (1) If the Executive Council has reason to believe that the continuance in office of any person who on the 14th day of June, 1958, was holding any teaching, administrative or other post in the University would be detrimental to the interests of the University, it may, after recording briefly the grounds for such belief, refer the case of any such person, together with the connected papers, if any, in its possession, to the Solicitor-General to the Government of India: Provided that, where an allegation of the nature referred to in this subsection relates to a member of the Executive Council who was holding any teaching, administrative or other post in the University on the said date, the Executive Council shall, without considering the allegation, refer the case of such person, together with a copy of the allegation, to the Solicitor-General to the Government of India. (2) If on any such reference the Solicitor-

General to the Government of India is of opinion that there is a prima facie case for inquiry, he shall refer the case of the person concerned to a Committee to be constituted for the purpose by the Central Government and known as the Reviewing Committee, which shall consist of the following persons, namely :-

(a) a person who is or has been a Judge of a High Court nominated by the Central Government who shall be the Chairman of the Committee; and

(b) two persons nominated by the Central Government from among persons who have had administrative or other experience in educational matters, (3) It shall be the duty of the Reviewing Committee to examine the case of every person referred to it by the Solicitor-General; and the Reviewing Committee shall, after holding such inquiry into the case as it may think fit, and after giving to the person concerned an opportunity of being heard, if he so desires, forward its recommendations to the Executive Council.

(4) The meetings of the Reviewing Committee shall be convened by such person as may be appointed for this purpose by the Chairman. (5) On receipt of the recommendations of the Reviewing Committee, the Executive Council shall take such action thereon as it may think fit:

Provided that when the recommendations relate to any such person as is referred to in the proviso to sub-section (1), such person shall not take part in any meeting of the Executive Council in which the recommendations are considered.

> (6) Before taking any action against any person on the recommendations of the Reviewing Committee, the Executive Council shall give him a reason. able opportunity of being heard."

Under the powers granted by this Statute and after sundry procedure, the Solicitor-General sent up the cases of the appellants (and some others, who are not before us) to the Reviewing Committee. The appellants appeared before the Reviewing Committee and represented their cases. Except in the case of Mr. Radhey Shyam Sharma (Civil Appeal No. 484 of 1960), whose case was kept pending because certain matters were sub judice, the Reviewing Committee sent its findings to the University. These findings were considered in respect of the four appellants in Group I (above), and on February 13, 1960, the Executive Council passed Resolutions Nos. 436 to 439 calling upon them to show cause why their services be not terminated, in view of the findings of the Reviewing Committee that the continuance in office of those appellants was detrimental to the interests of the University, which the Executive Council had accepted. These four appellants showed cause on March 5, 1960, No notices were, however, sent to the four appellants in Group II above, and this is one distinguishing feature in the cases. The four appellants (Group I) filed petitions under Art. 226 of the Constitution (W. Ps. Nos. 712 to 715 of 1960) on March 9,1960, in the High Court of Allahabad for relief against the proposed action. On the same day D. S. Mathur, J. passed an ad interim order as follows:

> " The respondents Nos. 1 to 3 are directed until further orders, not to take any further proceedings against the petitioners."

The Registrar of the University then applied to the High Court, and on April 25, 1960, Jagdish Sahai, J., made the following order:

> " In supersession of the interim order dated 9-3-1960, I order that the proceedings before respondent No. 2, Executive Council of Banaras Hindu University, arising out of the recommendations of the Reviewing Committee shall remain stayed."

On May 15, 1960, the Executive Council of the University passed a number of Resolutions. Resolution No. 89 took into consideration the explanations sent by the four appellants (Group 1) on March 5, 1960, and the order of the High Court, and it was resolved:

> "..... that the consideration of the above cases be postponed till after the writ petitions above mentioned are disposed of by the High Court. "

On the same day, however, Resolutions Nos. 99 to 102 were passed terminating the services of the four appellants (Group 1) from June 1, 1960, giving to them four or six months' salary, in lieu of notice. In the Resolution concerning Pandit Ram Vyas Pandey, there was a mention that the action was taken under cls. 4 and 7 of the agreement executed by him and Ordinance No. 6 of the Ordinances of the University. In the remaining three cases, it was not stated under what exercise of power the action was taken. Even earlier than the notice to show cause issued on February 13, 1960, explanations were called from Pandit Ram Vyas Pandey and Dr. Gopal Tripathi by Resolutions Nos.

278 and 281 dated September 9, 1959, and these explanations were ordered to be passed on the same day. Four Resolutions were also passed terminating the services of the other appellants belonging to Group II.

It was after these Resolutions were communicated that the eight petitions were filed by the appellants in the High Court of Allahabad. The High Court by a common judgment, which is under appeal, dismissed all the petitions with costs.

The case of the appellants, broadly stated, is that the Executive Council could not take recourse to the provisions of Ordinance No. 6 of the Ordinances of the University, having started action under Statute No. 30, that Ordinance No. 6 was subordinate to, Statute No. 30 and could not prevail where Statute No. 30 applied, that action against the four appellants in Group I was stayed by the High Court and Resolution No. 89, and that any action thereafter under the agreement or Ordinance No. 6 was incompetent. The action of the Executive Council was characterised as mala fide and a fraud upon the University Act and Statute No. 30. The High Court did not accept any of these contentions. Before us, the same points have been urged again, and in reply, the University contends that the Executive Council could take action Under the terms of the agreements, where such agreements existed, or under Ordinance No. 6 or Statute No. 30 at its Option, and that where alternative remedies were provided by law, all or any. of the remedies could be invoked.

Before we deal with these arguments, it is necessary to examine closely the powers of the Executive Council of the University, as they can be gathered from the Banaras Hindu University Act, the Statutes and Ordinanaces framed under it. The Act was passed in 1915 (XVI of 1915), but it was amended in 1930, 1951 and 1958. Originally, the Act provided for the framing of Statutes and Regulations by the University ; but in 1951, the existing Regulations were deemed to be the first Ordinances under s. 18(2) of the amended Act. A further power to make Regulations was conferred by s. 19. Thereafter, there were Regulations in addition ,to the University Act, Statutes and Qrdinances, We are not concerned with the Regulations, and no reference need be made to them except to say that they ranked below the Ordinances and had to be consistent, with the Act, the Statutes and the Ordinances.

In the Act, the word "Statute" was defined to' mean " the Statutes for the time being in force ", and' there was an analogous definition of the word " Ordinances ". Section 17(2) of the Act enacted that " the first Statutes shall be those set out in Schedule I ". The power to frame Statutes was conferred on the Executive Council by s. 17(3), but was subject to the previous approval of the Visitor. This sub-section, as it was amended by s. 4 of the Banaras Hindu University (Amendment) Act, 1958, read as follows:

> " The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes; but every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction, disallow or remit it for further consideration.

Section 4A of the Act invested the University with powers, and sub-ss. (7) and (13) may be quoted here:

" (7) to institute professorships, readerships, lectureships and other teaching posts required by the university and to appoint persons to such professorships, readerships, lectureships and other posts; (13) to create administrative, ministerial and other necessary posts and to make appointments thereto."

Section 7 of the Act named the officers and authorities of the University, but power was reserved to the University to declare, by statutes, other officers and authorities of the University.

In addition to being an authority of the University, the Executive Council was appointed the executive body of the University. Sub-section (2) of s. 10 of the Act laid down:

" The Executive Council shall exercise such powers and perform such duties as may be vested in it by the Statutes."

Section 17 of the Act provided how the statutes were to be framed and what they were to contain. We have already referred to the first Statutes of the Uni- versity which were placed in Schedule of the Act and the power of the Executive Council to make new or additional Statutes or to amend or repeal existing Statutes subject to the prior approval of the Visitor. Section 17 provided:

" 17(1). Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:-

(c) the appointment, powers and duties of the officers of the University."

From the above analysis, it is clear that the Act created the Executive Council as an authority and the executive body of the University; but its powers were conferred and its duties were created by the Statutes. The source of power and duties in respect of the Executive Council was thus the Statutes under the authority of the Act.

Section 18 of the Act (as amended in 1951) provided:

" 18(1). Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:-

Ordinances:

emoluments and terms and conditions of service of teachers of the University."

The Ordinances were thus made subordinate to the Act and the Statutes, and could not go beyond them or derogate from them.

One more provision of the Act as amended in 1951 may be read here. It is s.19A,which provided:

> " 19A. (1) Every salaried officer and teacher of the University shall be appointed under a written con. tract, which shall be lodged with the University and a copy of which shall be furnished to the officer or teacher concerned. (2) Any dispute arising out of a contract between the University and any of its officers or teachers shall, at the request of the officer or teacher concerned or at the instance of the University, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an umpire, appointed by the Visitor, and the decision of the Tribunal shall be final."

The powers granted to the Executive Council by the Statutes may now be seen. Statute No. 18 was amended in 1958, and is referred to as amended. It laid down:

> " 18(1). The Executive Council shall, subject to the control of the Visitor, have the management and administration of the whole revenue and property of the University and the conduct of all administrative affairs of the University.
>
> (2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely:
>
> (i) To appoint, from time to time,...

Principals of Colleges and institutions established by the University, and such Professors, Readers, Lecturers and other members of the teaching staff, as may be necessary, on the recommendation of Selection Committees constituted for the purpose (Proviso omitted)

(ii) to appoint members of the administrative staff or to delegate the power of appointment to such authority or authorities, or officers as the Executive Council may, from time to time, by resolution, either generally or specially direct;.. "

> The power of appointment was thus conferred by the Statutes on the Executive Council.
>
> We now turn to the Ordinances, where the disciplinary rules are to be found. On October 13, 1958, the Executive Council by Resolution No. 181 reconstituted the material Ordinance. Chapter III in part I of the Banaras Hindu University Calendar (1958) contains the terms of appointment, grades, salary and conditions of service of teachers, officers and other employees of the University. That Chapter is divided into many sections and sub-sections. Section 5 deals with teaching and administrative posts, and s. 6, with the conditions of service and terms of appointment. Ordinance No. 2 in this section lays down:

> " The conditions of service of the staff shall be embodied in the Agreement Form of service. Every employee shall on confirmation sign the agreement Form. "

Ordinance No. 6, before its amendment, read:

> " The Executive Council shall be entitled to terminate the engagement of an employee (i) on grounds of misconduct and (ii) physical unfitness for good cause and after calling for and considering his explanation and after giving four months' notice in writing or payment of four months' salary in lieu of notice.
>
> The Ordinance was unhappily worded. The expression "physical unfitness for good cause" hardly makes sense. More difficulty arises by the use of the conjunction "and".

That word used for the first time in the Ordinance is obviously used disjunctively; but on the second and third time it is used conjunctively, introducing two conditions precedent. So far, there is no dispute, though much bad drafting. Dispute arises over the last use of the conjunction 'and" in the Ordinance. The appellants contend that it must be read conjunctively as introducing a third condition precedent, while the University urges that it is a separate power of termination unconnected with the others. The High Court was persuaded to read the clause as interpreted by the University and, in our opinion, rightly. In 1958, the Executive Council re-framed this Ordinance but surprisingly enough, without any better success. The re- enacted Ordinance, as printed in the amendment slip, read:

> " 6. The Executive Council shall be entitled to terminate the engagement of an employee for
>
> (i) misconduct, or
>
> (ii) physical unfitness, or
>
> (iii) inefficiency, or
>
> (iv) breach on his part of one or more of the terms of his agreement with the University, after calling for and considering his explanation in each of the cases mentioned above; or
>
> (v) after giving four months' notice or payment' of four months' salary in lieu thereof.

The dispute this time arises from the careless use of the word "or". The Ordinance mentions four reasons for termination of services, which are numbered (i) to (iv). In each of those cases, there is the condition precedent that explanation must be called for and considered. So far, the meaning is clear, even though the drafting is far from commendable. Then follow a semi-colon and "or" and number

(v). The word "or" does not seek to create an option between calling for and considering an explanation and a four months' notice, etc. The number (v) and the semi-colon between " mentioned above " and " or " do not permit this reading. The difficulty, however, does not end there. If we read the fifth clause as connected independently with the opening words, we get this:

> " The Executive Council shall be entitled to terminate the engagement of an employee for .....
>
> (v) after giving four months' notice..... which makes the word "for " superfluous in the sentence.

In our opinion, the sense of the Ordinance can be obtained by rearranging the matter thus:

> " 6. The Executive Council shall be entitled to terminate the engagement of an employee for
>
> (i) misconduct, or
>
> (ii) physical unfitness, or
>
> (iii) inefficiency, or
>
> (iv) breach on his part of one or more of the terms of his agreement with the University, after calling for and considering his explanation in each of the cases mentioned above;

or (v) after giving four months' notice or payment of four months' salary in lieu thereof "

> This means that, if action is taken under cls. (i) to (iv), an opportunity of showing cause against the termination of the service must be given; but action can also be taken to terminate the service, without assigning a cause, on four months' notice or four months' salary ,in lieu of notice. The case of the University is that all these orders of termination of service were passed under the power granted by cl. (v) of this Ordinance, modified by the terms of the agreements as they existed. The result of this analysis shows that the power of the University to terminate the services of the incumbents was derived from (a) agreements, (b) Ordinances, and (c) Statute No. 30. The agreements merely represented the general right of a master to terminate the services of incumbents, where they were subject to agreements, after reasonable notice, without giving any reason. The Ordinances, in addition to preserving that right, gave power to terminate service for proved misconduct, inefficiency or physical unfitness. These powers, unless used according to the stated conditions, were unexercisable, and in the case of a service which was protected against arbitrary action, being perma- nent, could only be invoked in an appropriate instance. In those cases which would fall within the categories of proved misconduct, inefficiency and

physical unfitness, the University was required to take action in accordance with the Ordinance and the Rules.

This was the position before the new Statute No. 30 was added by Parliament. This legislative measure was undertaken as the result of the sorry state of affairs of the University, and a special ground was required to be proved. It was that the continuance of an incumbent was detrimental to the interests of the University. The power to terminate the services of an incumbent on this ground was hedged in with appropriate safeguards, due to the struggle for power which it is said, had arisen in the University in the past; and though the Mudaliar Committee had suggested a Screening Committee to go into the cases of all teachers, Parliament thought it necessary that before any case reached the Screening Committee (renamed the Reviewing Committee) it should be scrutinised by the Solicitor-General. The procedure which the new Statute enacted, ensured fair play and proper scrutiny. First, the Executive Council had to resolve that the continuance in office of any particular person was detrimental to the interests of the University. The reasons for such belief had to be recorded briefly, and the Resolution together with the connected papers had to be sent to the Solicitor-General. In the case of a teacher who was a member of the Executive Council, the Executive Council was not to consider the allegations but to send the papers to the Solicitor-General. The Solicitor-General had to decide if there was a prima facie case for enquiry, and then he was to refer suitable cases to the Reviewing Committee. The Reviewing Committee was then to enquire into the matter, and forward its recommendations to the Executive Council. The Executive Council was thereafter required to proceed under cl. (6), which was as follows:

" Before taking any action against any person on the recommendations of the Reviewing Committee, the Executive Council shall give him a reasonable opportunity of being heard. "

The power of the Executive Council was conferred by cl. 5, which provided:

" On receipt of the recommendations of the Reviewing Committee, the Executive Council shall take such action thereon as it may think fit. "

The procedure laid down in Statute No. 30 was followed by the University. The cases of the appellants went before the Solicitor-General and then before the Reviewing Committee. In seven cases out of eight,' the Reviewing Committee gave its opinion. In four out of seven cases, a show-cause notice was issued under cl. 6 but not in others; and the four appellants (Group 1) also showed cause. They also obtained a stay from the High Court of Allahabad against action under Statute No. 30, and the Executive Council decided to postpone consideration of their cases. But the Executive Council abandoned action under Statute No. 30, and proceeded to act under powers which, it thought, flowed from the agreements and the Ordinances, and terminated the services of the eight appellants, giving four or six months' salary in lieu of notice.

In so far as the power of terminating services with. out notice was concerned, the general power could not be invoked, when allegations of conduct detrimental to the interests of the University had already been made and scrutinised by the Solicitor-General and the Reviewing Committee and the matter was pending before the Executive Council. The powers granted by the Ordinances are expressly subject to the Statutes, and the Ordinances cannot prevail over the Statutes.

Statute No. 30 provided for special action in special circumstances. The existence of the special circumstances is expressly admitted, inasmuch as the cases were referred to the Reviewing Committee. The existence of the special circumstances and the special remedy excluded the right of the University to invoke its general powers, not to start with, but after the special procedure had been deliberately adopted and had commenced. If the cases of these appellants had not been sent to the Solicitor-General and the Reviewing Committee at all, other considerations might have arisen. The question is whether after the special procedure was once invoked, it could be dropped in the middle and other powers exercised.

The University relies on three arguments in this connection. It is first contended that the powers of the University were cumulative, and that the University could resort to any of the remedies open to it. Reliance is placed in support of this argument on Shankar Sahai v. Din Dial (1) (observations of Mahmood, J., at p. 418), Om Prakash Gupta v. State of U. P. (2), The State of Madhya Pradesh v. Veereshwar Rao Agnihotry 3), Brockwell v. Bullock (1), Seward v. " Vera Cruz" (5) and Barker v. Edger (6). It is not necessary to refer to these cases in detail. It has been laid down recently by this Court that, where the law allows alternative remedies, one or the other or both can be invoked unless one remedy is expressly or by necessary implication excluded by the other (See State (1) (1889) I.L.R. 12 All. 409.

(2) [1957] S.C.R. 423.

(3) [1957] S.C.R, 868, (4) (1889) 22 Q.B.D. 567.

(5) (1884) 10 A.C. 59.

(6) [1898] A.C. 748 (P.C.), of Kerala v. G. M. Francis and Co. (1)). The question thus is whether there is anything expressly stated by law or clearly implied which would exclude powers under the agreements and the Ordinances, when action has been taken under the Statutes. The University Act expressly makes the Ordinances subject to the Statutes, and in case of any clash between them, the Ordinances must be made to stand down. Further, Statute No. 30 was enacted by Parliament to meet a special situation, and contained a code for dealing with certain special kinds of cases. To that extent, the implication is not only one way, but is also clear. The University could not, having started enquiries under Statute No. 30, abandon the enquiries in midcourse and pass on to something else. This is illustrated by the contradictory Resolutions passed on the same day. In the case of the four appellants belonging to Group I, action under Statute No. 30 was deferred till after the decision of the High Court. But one is tempted to ask what possible further action was con- templated when their services were terminated the same day. It may be pointed out here that dropping of action under Statute No. 30 deprived the appellants of the right to show cause against what had been

alleged against them or found by the Reviewing Committee.

The appellants characterised the whole action as lacking in bonafides. The action can only be questioned if it is ultra vires' and proof of alien or irrelevant motive is only an example of the ultra vires character of the action, as observed by Warrington, L.J., in the following passage:

> " My view then is that only case in which the Court can interfere with an act of a public body which is, on the face of it, regular and within its powers, is when it is proved to be in fact ultra vires, and that the references in the judgments in the several cases cited in argument to Lad-faith, corruption, alien and irrelevant motives, collateral and indirect objects, and so forth, are merely intended when properly understood as examples of matters (1) [1961] 3 S.C.R. 181.

which if proved to exist might establish the ultra vires character of the action in question " (Short v. Poole Corporation (1). We are not concerned so much with the motives, nor even with the justice of the action as with its legality, and, in our opinion, having invoked Statute No. 30 in the special circumstances and having gone on with that procedure, it was not possible to undo everything and rely upon other powers, which were not only subordinate but were clearly not available in those special circumstances which led, to action under Statute No. 30.

The next argument is that Statute No. 30 itself left liberty of action, inasmuch as el. 5 gave power to the Executive Council to act as it thought fit. To begin with, it is wrong to think that the words conferring discretion are to be read in the abstract. Those words have to be read within the four corners of Statute No. 30. Tile words are permissive, no doubt, as to the choice of action, but are imperative in so far as they require some act completing the intent and purpose of the enquiry itself. The words " shall take such action thereon as it may think fit " give liberty of action on the recommendations of the Reviewing Committee, but lay a duty to form an opinion. The words do not give a discretion to take action outside the Statute. Lastly, it is argued that the Executive Council as the appointing authority had the power also to dismiss, and reference is made to ss. 4(7) and 4(13) of the Act and s. 16 of the General Clauses Act. None can deny that the University did possess such a power. The question is whether it exercised it correctly under the Statutes and Ordinances. We are quite clear that the Executive Council did not. We may say here that we have not accepted the contention that the action of the Executive Council was based upon malice or any indirect or oblique motive. The error was in thinking that there were cumulative or alternative powers, even after the adoption of the special procedure under Statute No. 30. We are, therefore, of opinion that (1) [1926] Ch. 66, 91.

the impugned Resolutions were ultra vires and should be quashed.

In the result, the appeals are allowed. Resolutions Nos. 90, 94 to 96 and 99 to 102 dated May 15, 1960, of the Executive Council of the Banaras Hindu University are quashed, and an appropriate writ or writs shall issue to the respondents to that effect. The respondents shall pay the costs of these appeals, as also of the High Court. Only one set of hearing fee here and in the High Court shall be allowed.

Appeals allowed.