

## Dr. Jitendra Nath Pandey and Dr. Viveka Nand Vs The State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Feb. 5, 2007

**Acts Referred:** Uttar Pradesh State Universities Act, 1973 â€” Section 50

**Citation:** (2007) 3 ADJ 515 : (2008) 5 AWC 4405

**Hon'ble Judges:** V.C. Misra, J; Amitava Lala, J

**Bench:** Division Bench

**Final Decision:** Allowed

### Judgement

Amitava Lala, J

1. This is a case of quashing the impugned order of termination passed without prior approval of the Vice-Chancellor of the University. Learned

Counsel appearing for the Committee of Management cited a Judgment to establish that no writ lies as against the Committee of Management. He

cited the Judgment of Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, According to us the following portion of the

Judgment is relevant for due consideration:

The Committee of Management of an Intermediate College is not a statutory body. Nevertheless, a Writ Petition filed against it is maintainable if

such petition is for enforcement of performance of any legal obligations or duties imposed on such committee by a statute.

2. To elaborate his argument he contended that there is no statutory obligation or duty imposed on the Committee of Management for the purpose

of following the Government Order dated 18.7.2006 (Annexure-17 to the writ petition).

3. We are not agreeable with him since the approval from the Vice chancellor is part and parcel of Sub Clause (6) of Section 50 of the U.P. State

University Act, reads as under:

(6) Notwithstanding anything contained in the foregoing sub-section, the State Government may, in order to implement any decision taken by it on

the basis of any suggestion or recommendation of the University Grants Commission or the State or national education policy with regard to the

qualifications of the teachers, require the Executive Council to make new or additional Statutes or amend or repeal the Statutes referred to in Sub-

section (1) or Sub-section (1-A) within a specified time and if the Executive Council fails to comply with such requirement, the State Government

may make new or additional Statutes or amend or repeal the Statutes referred to in Sub-section (1) or Sub-section (1-A).

4. The learned Counsel for the University contended before this Court that they have issued several letters by the pen of the Registrar to take

action against the Committee of Management in case the mandate is not followed.

5. The case of the petitioners is that they have been appointed as per relevant provisions of the Government Order dated 9.5.2005 followed by

Government Order dated 26.4.2004. By a further Government Order dated 11.3.2005 it issued directions for compliance of the Government

Order dated 9.5.2005 for the Degree Colleges running under self financing scheme. Since the salary was not paid to the petitioners for the months

of April, May and June 2005 the matter was agitated by the petitioners before the authorities including Regional Higher Officer and Registrar of the

University on behalf of the Vice Chancellor who on their turn directed the Manager of the College to make due payment to the teachers. However,

vide impugned order dated 30.6.2006, the services of the petitioners were terminated by the respondent No. 5. Vide letter dated 18.7.2006 the

Registrar informed the Committee of Management of the order passed by the Vice Chancellor that the petitioners had been duly selected by a duly

constituted committee and that no approval/sanction was taken from the Vice Chancellor in respect with their termination. It was further directed

that the new advertisement so made be cancelled and the work be taken from the teachers appointed earlier and that in case no positive response

was received from the Committee of Management by 31.7.2006 and the directions of the University were not complied with then action would be

taken against the Committee of Management in accordance with law ceasing its affiliation and alternate arrangements would be made. The

Committee of Management-respondent No. 5 vide its letter dated 2.8.2006 submitted the reasons mentioned therein that the Committee of

Management would not be again forced to be asked to make payment of the salary. The petitioners being thus aggrieved filed this writ petition on

the ground that the termination order of the petitioners is per se illegal as the period of the agreement had still not come to an end and the services

could only be terminated after conducting the disciplinary proceedings with prior approval of the Vice Chancellor. Admittedly, no disciplinary

proceeding had been initiated neither the petitioners were served with any show cause notice nor charge sheet.

6. The learned Counsel appearing for the petitioners contended before this Court in addition to his submission that various Universities like Agra

University have adopted the procedure and necessary amendments have been incorporated in the Statute vide Government Notification No. E-

3137/G.S., dated 23.9.1994 (E.C. Res. No. 9/2.7 dated 25.2.1995 as 11.17. Relevant portion 11.17 (9) reads as under:

(9) In case, the Management or the University, as the case may be, is not satisfied with teaching work of a teacher, the management or the

University, as the case may be, may take disciplinary action against him/her and remove him/her from the service during the period of contract.

Provided that the approval of the Vice Chancellor shall be obtained, if removal of the teacher (of an affiliated college/institution) indulges

disciplinary action.

7. In effect the University and the Vice Chancellor are supporting the cause of the petitioners. Since no approval has been accorded by the Vice

Chancellor, the action as taken by them is not in accordance with law.

8. In view of the above observations, we are of the view that there is a positive case of the petitioners for getting affirmative order. Accordingly,

the writ petition is allowed. The impugned order dated 30.6.2006 passed by respondent No. 5-Annexures 15 and 16 to the writ petition are

quashed. Interim order passed earlier stands confirmed. The salary of the petitioners will be disbursed from the date it was stopped. However, nor

order is passed as to costs.

v.C. Misra, J.

9. I agree.