

## Shiv Chand Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Aug. 10, 2009

**Acts Referred:** Uttar Pradesh Intermediate Education Regulations, 1921 – Regulation 31, 35, 36, 36(1), 37

**Citation:** (2010) 3 AWC 3108

**Hon'ble Judges:** Sudhir Agarwal, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Sudhir Agarwal, J.

Heard Sri G.P. Singh for the petitioner, learned standing counsel for respondents No. 1 and 3, Sri A.K. Malviya on behalf of respondent No. 2 and Sri S.N. Yadav appearing for respondent No. 4.

2. Sri Singh contended that petitioner was dismissed by the Principal, Shankar Jee Inter College, Patjeewa, P.O. Kasaila, district Mau (hereinafter

referred to as the ""College"" ) by order dated 16.7.1998 without holding any enquiry whatsoever in accordance with the procedure laid down under

Regulations 35 to 38 of Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921 (hereinafter referred to as ""1921

Act"" ). He pointed out that on 11.1.1997 the Principal issued a show cause notice on certain allegations which was replied by the petitioner vide

letter dated 13.1.1997. Thereafter, it appears that the Principal appointed one Sri Shyam Avadh Yadav, an Assistant Teacher, as enquiry officer

requiring him to conduct oral enquiry and submit report. The said enquiry officer did not hold any oral enquiry whatsoever and submitted report on

28.1.1997 taking into account the show cause notice dated 11.1.1997 as constituting charge-sheet and the petitioner's reply dated 13.1.1997 as

his reply to the charge-sheet. Based on the said report, the Principal of the College passed the impugned order of dismissal on 16.7.1998 and that

too without obtaining any prior approval of D.I.O.S. as contemplated under Regulation 31 Chapter III of the Regulations framed under 1921 Act

(hereinafter referred to as ""Regulations"" ). He placed reliance on certain decisions of this Court pronounced by Hon'ble single Judges in Awadhesh

Singh v. District Inspector of Schools, Deoria and Ors. 1996 (2) UPLBEC 766 : 1996 AWC (Supp) 543 ; Daya Shankar Tiwari Vs. Principal,

Smt. Ramwanti Devi, Beni Madho Uchchatar Madhyamik Vidyalaya, Neegaon, Mirzapur and others, Principal, P.N.V. Inter College and Swami

Din Vs. The Distt. Inspector of Schools and Ram Lal, Ram Shiroman Singh v. District Inspector of Schools, Fatehpur and Ors. 2008 (2) AWC

2147 and a Division Bench judgment in Principal Rastriya Inter College, Bali Nichalaul, district Principal, Rastriya Inter College, Mahrajganj and

another Vs. District Inspector of Schools, Mahrajganj and others,

3. Sri Malviya, on the other hand, opposed the writ petition and submitted that the show cause notice dated 11.1.1997 itself was in fact a charge-

sheet which was replied by the petitioner on 13.1.1997 and, thereafter, the enquiry officer submitted his report on 28.1.1997. Considering the

same, the impugned order of dismissal was passed. He also placed before the Court certain letters issued to the petitioner requiring him to appear

before the Managing Committee and submitted that the said letters constitute an opportunity of defence to the petitioner before passing the

impugned order of dismissal by asking him to appear before the Committee of Management and put his defence which he failed to avail and,

therefore, he is now estopped from contending that the impugned order has been passed without any opportunity. Besides, referring to a Division

Bench judgment in Special Appeal No. 360 of 2006, Ali Ahamad Ansari v. District Inspector of Schools, Kushinagar, decided on 19.4.2006:

2006 (6) AWC 6312, he submitted that it has been held therein that prior approval of D.I.O.S. before dismissing a Class IV employee is not at all

required and, therefore, the impugned order of dismissal cannot be said to be vitiated due to absence of prior approval of D.I.O.S. He also said

that in the SLP filed against the aforesaid judgment, only notice has been issued and the said judgment is still in operation though the matter is

pending before the Apex Court.

4. Learned standing counsel and Sri S.K. Yadav adopted the above contentions of Sri Malviya and said that since the enquiry was held after giving

charge-sheet to the petitioner, there is no illegality in the matter and the writ petition deserves to be dismissed.

5. Having considered the rival submissions and perusing the record, this Court find that the basic facts are not in dispute. The only four dates are

relevant for deciding the controversy, which has engaged attention of this Court in the present matter:

(1) 11.1.1997-show cause notice issued (respondents claim that it should be constituted as charge-sheet);

(2) 13.1.1997 - petitioner submitted his reply;

(3) 28.1.1997-enquiry officer submitted his report; and

(4) 16.7.1998-the order of termination passed by the Principal.

6. Besides the above, certain other dates which may just be referred for reference are that the petitioner was placed under suspension on

16.1.1997 by the Principal (respondent No. 2). Then petitioner claiming that he has not received any order of termination, made a representation

on 19.3.1998 requesting the District Inspector of Schools, Mau (hereinafter referred to as "D.I.O.S.") to direct the College authorities to revoke

his suspension, which is continuing for the last more than a year, i.e., from 16.1.1997. Pursuant to query made by D.I.O.S., the respondent No. 2

vide letter dated 17.7.1998 (Annexure-12 to the writ petition) informed the D.I.O.S. that the petitioner has already been terminated on 17.7.1998

(this date appears to have been wrongly typed in Annexure-12 since the parties agreed that the order of termination is of 16.7.1998). Thereafter,

the petitioner preferred an appeal to the Committee of Management under Regulations 31, Chapter III of the Regulations vide his memo of appeal

dated 10.9.1998, which has been rejected by the Management by the impugned order dated 22.11.1998.

7. The first question up for consideration is whether the termination of the petitioner from service by respondent No. 2 and rejection of appeal by

respondent No. 4 is in accordance with law or not.

8. Regulations 36(1), Chapter III of the Regulations framed under 1921 Act lays down procedure for disciplinary enquiry and reads as under:

36 (1) The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be

communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts

and circumstances against him. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his

defence and to state whether he desired to be heard in person. If he or the inquiring authority so desires, an oral enquiry shall be held in respect of

such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as that inquiring authority considers necessary. The

person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish;

provided that the enquiring authority conducting the enquiry may for sufficient reasons to be recorded in writing, refuse to call a witness. The

proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The inquiring authority

conducting the enquiry may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on

the employee.

9. A perusal of the above provision shows that the charge-sheet would contain clearly and precisely the allegations constituting misconduct, i.e.,

facts and circumstances, which are against the employee concerned, and he shall be given three weeks" time from the date of receipt of the

charge-sheet to submit his written statement of defence. He is also entitled to inform the disciplinary authority as to whether he desires to be heard

in person or not. If the employee so desire or that the enquiring authority so desire, an oral enquiry is obligatory to be held in respect of such of the

allegations as are not admitted. The oral enquiry would be held by giving opportunity to the delinquent employee to cross-examine witnesses, give

evidence in person and to produce his witnesses in support of his case as he wishes, unless the enquiry officer finds any of such witnesses as not

necessary. The enquiry proceeding shall contain sufficient record of the evidence, statement of the findings and the grounds.

10. In the case in hand, if I come to the alleged charge-sheet, i.e., charge-sheet dated 11.1.1997, which is on record as Annexure-2 to the writ

petition, it shows that the Principal of the College informed the petitioner of certain facts pertaining to withdrawal of scholarship funds from the

Bank brought to his (Principal's) notice in regard where to he made enquiry and pursuant thereto he found that four charges can be levelled against

the petitioner which are as under:

1- vkus mDr pkjsa pSd pksjh ls fudky fy,A

2- vkus Ã-Ã¿-Ã½e" k% fnukad 23-12-1996 dks pSd la0 0035182] fnukad 1-1-1997 dks pSd la0 0035194 ,oa fnukad 2-1-1997 dks pSd la0

0035117 dks Hkqxrku fd;kA

3- fnukad 7-1-1997 dks pSd la0 0035193 dk Hkqxrku vki }kjk izklr djus dh dksf" k" k dh x;h ftls "kk[kk izca/kd us esjh nLr[kr ds vk/kkj ij jksd

fn;k ftls fl) gksrk gS fd mDr xcu bUgksus gh fd;k gSA

4- ;g fd fnukad 6-1-1997 dks vki fcuk fdLh lwpuk ds vuqifLFkr gS bls fy, vkidks dbZ ckj ekSf[kd lwpr fd;k tk pqdk gS ,oa budk osru Hkh

dkVk tk pqdk gS bls Li""V gksrk gS fd bUgksus voKk] vogsyuk] vuq"kkluhurk ,oa vius nkf;Ro dh mnklhurk izrhr gksrh gSA

11. The letter further shows that the petitioner was required to submit his explanation within a week otherwise strict action would be taken for

which he would be responsible. It is no doubt true that from bare reading of the allegations made in the said letter, one may infer that the same

constitute charges levelled against the petitioner, but it cannot be said that the aforesaid charges have been mentioned giving all the facts and

circumstances, which are found against the petitioner. For example, the first allegations is that he has withdrawn four cheques by committing theft

but no facts and details thereof are mentioned. The evidence, if any, relied by the disciplinary authority is also not mentioned therein. Similarly in

respect to second allegation, I find lack of manner of payment etc. Same is the position about third and fourth allegations. It also does not show

that the petitioner, if desires for oral enquiry or not, may inform the disciplinary authority. The time for giving explanation is only one week though

Regulation 36(1) provides three weeks time from the date of receipt of the charge-sheet.

12. Even if taking a very lenient view, I treat the letter dated 11.1.1997 (Annexure-2 to the writ petition) as a charge-sheet as contemplated under

Regulation 36(1). it is evident from the petitioner's letter dated 13.1.1997 that only some part of the notice he admits and rest part he denied or

explained. The Principal, however, himself did not treat the show cause notice as well as its reply given by the petitioner as a charge-sheet and

reply of the petitioner admitting all the charges but finding the same to be a preliminary kind of investigation, he passed order dated 15/16.1.1997

(Annexure-4 to the writ petition) placing the petitioner under suspension holding that a prima facie case of suspension has been made out against

the petitioner in the light of reply given by him. Thereafter, it appears that the respondents No. 2 appointed one Sri Shyam Awadh Yadav,

Assistant Teacher of the College as enquiry officer vide letter dated 17.1.1997 as is evident from the enquiry report dated 28.1.1997 copy

whereof is on record as Annexure-C.A. 3 to the counter-affidavit filed by respondent No. 2. That being so, it is evident that the disciplinary

authority, i.e., Principal decided to hold regular enquiry in the matter after receiving reply of the petitioner to the said notice dated 17.1.1997. He

did not treat the proceeding consisting of his notice and petitioner's reply as a regular inquiry when he decided for a regular inquiry, suspended the

petitioner and appointed an inquiry officer. It was thus incumbent upon the enquiry officer to conduct an oral enquiry and not to treat the charges

levelled against the petitioner deemed proved unless disproved by the petitioner. Nothing has been brought before this Court either by respondent

No. 2 or by respondent No. 4 or the respondents No. 1 and 3 that any oral enquiry was conducted by the enquiry officer between 17.1.1997 and

28.1.1997 by fixing any date, etc. On the contrary, just in a few lines, the enquiry officer submitted report on 28.1.1997 and it would be interesting

to quote the aforesaid report in its entirety as under:

Isok esa]

Jh eku~ iz/kkukpk;Z egksn;]

Jh "kadj b0dk0 irthok&lhrkjke

dISyk csyk] eÃ-Â¿Â½

ekU;oj]

vkids vkns"k fnukad 17-1-1997 ds vuqlkj Jh f"kopUn ifjpkjd ds fuyEcu ls IEcfU/kr vkjksi ftldh lwpuk gesa fyf[kr :i ls nh x;h A tkWap vk[k izLrq

djus gsrq vknsf"kr fd;k x;k A bl IEcu/k esa eSus IE;d :i ls tkWap fd;k rRIEcU/kh vfHkys[kksa dk voyksdu fd;k ,oa Jh f"kopUn ifjpkjd ls IEidZ

djds iwNrKn fd;k vkSj bl fu"d""kZ ij igqWqapk fd Jh f"kopUn ifjpkjd ds fuyEcu IEcu/kh yxk;s x;s leLr vkjksi IR; gS A vk[k Jheku~ th dh Isok

esa izLrq gSA

To,

The Principal,

Sri Shanker Inter College, Patjeewa Sitaram

Kaisala Bela, Mau

Sir,

By your order dated 17.1.1997, in connection of the charges regarding suspension of Sri Shiv Chand Peon, which were intimated to me in writing,

I was directed to submit the enquiry report. In this respect, I have made a proper enquiry and seen the relevant documents as also enquired from

Sri Shiv Chand Peon after making contact with him and I readied to the conclusion that all the charge levelled in respect to suspension of Sri Shiv

Chand Peon are correct. The report is submitted for kind perusal.

(English translation by the Court)

13. By no stretch of imagination, one can say that the proceedings conducted against the petitioner as discussed above, are consistent with the

procedure prescribed under Regulation 36(1) Chapter III of the Regulations. The petitioner has been inflicted with the major penalty of removal.

Before imposing such a major penalty, an oral enquiry is must as held in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg.

Mils Federation Ltd., Kanpur and another,

14. Holding of an oral enquiry by issuing a charge-sheet in accordance with procedure prescribed under Regulation 36 is mandatory as held in

Ram Shiroman Singh Vs. The District Inspector of Schools and Others,

15. Besides, it is also well established in law that an enquiry report must be speaking one discussing the evidence on record and should not contain

merely the conclusions drawn by the enquiry officer. A Division Bench of this Court in Special Appeal No. 1196 of 1999, Committee of

Management v. Abdul Cadeer alias Abdul Qadir and Ors. where a similar inquiry report came up for consideration, after considering the law laid

down by the Hon"ble Apex Court in Anil Kumar Vs. Presiding Officer and Others, held as under:

In the instant case, as noticed above, the inquiry officer has not said anything as to what was the material or evidence on record on which he

applied his mind and thereupon reached to the conclusion that the charges stand proved. It is true that in the matter of departmental proceeding

scope of judicial review is limited and the only thing to be seen is as to whether there is any error in the decision making process or there is denial

of adequate opportunity to the delinquent in defending the charges or there is any violation of substantive provision of law but this Court will

reappraise the evidence and sit on appeal over the order passed by the departmental authority but it has to be seen whether finding or conclusion is

based on some evidence or not. This Court can interfere where it is found that proceeding is conducted in violation of principle of natural justice or

of statutory rules prescribing the mode for holding enquiry or where the conclusion or finding reached by the Inquiry Officer and the disciplinary

authority is based on no evidence or where the conclusion or finding is such that no prudent person would have ever reached the same. As noticed

above! it does not appear from the report of the inquiry officer that any record or evidence was brought before him by the department in support

of the charges on the basis of which he has found him guilty of the charges. He has held the petitioner-respondent No. 1 guilty only on the ground

that he did not appear before him despite notice and, therefore, the charges stand proved. This, in fact, is no inquiry in the eye of law and,

therefore, the order of dismissal based on such inquiry report cannot sustain and has to be quashed.

16. The same view has been reiterated by another Division Bench of this Court (wherein I was also a member) in Special Appeal No. 533 of

2004, Chandra Pal Singh v. M.D., U.P. Co-operative Federation and Ors. decided on 12.10.2006.

17. A perusal of the enquiry report dated 28.1.1997 makes it decisively clear that nothing has been discussed by the enquiry officer and except of

reproducing certain transactions, i.e., about suspension, reply given by the petitioner etc. the enquiry officer has mentioned in just a single line his

conclusion that the petitioner is guilty of all the charges. Rather enquiry officer has mentioned in his order that the charges levelled against the

petitioner in reference to suspension are proved which shows that the enquiry officer had not understood even the concept of the enquiry and the

purpose for which he was appointed. The above enquiry report does not withstand the legal requirement in respect to an enquiry report.

18. The law laid down in the above cases as also the discussion made above clearly shows that neither the alleged inquiry proceeding nor the

enquiry report dated 28.1.1997 are consistent with the requirement of the statute and thus cannot sustain.

19. Then comes a subsequent event. From the date of submission of the alleged enquiry report, it does not appear as to what transpires with the

respondent Nos. 2 and 4 thereafter inasmuch for almost one and half years nothing appears to have been done by the respondent No. 2. It is

probably when the petitioner approached the D.I.O.S. vide his representation dated 9.7.1993 (Annexure-11 to the writ petition) seeking

revocation of the order of suspension and the D.I.O.S. made some query from the Principal, he, i.e., the Principal firstly issued the removal order

on 16.7.1998 and, thereafter, on the very next date, i.e., on 17.7.1998 informed the D.I.O.S. about the removal/termination of the petitioner.

20. All these aspects have not been considered by the Management in the appeal preferred by the petitioner though he categorically raised all these

pleas including that the enquiry has not been conducted in accordance with Regulations 34 and 35 and no opportunity of oral hearing was afforded

to the petitioner. It appears that the Management, respondent No. 4, also proceeded in a mechanical manner and the only question which it has

considered further is about the prior approval of D.I.O.S. before passing the termination order of the petitioner and said that it was not necessary

and may notice hereat that the law till the date the appeal was decided by respondents No. 4 as laid down by this Court was otherwise, but the

Management very conveniently has chosen to ignore the same. However, this aspect I propose to deal in detail hereunder.

21. Coming to the question of requirement of "prior approval", it would be appropriate to reproduce Regulation 31 Chapter III of the Regulations

as under:

31. Punishment to employees for which prior sanction from Inspector or Regional Inspectress would be essential may be any one of the following:

- (1) Discharge,
- (2) Removal or Termination,
- (3) Demotion in grade,
- (4) Reduction in emoluments.

Principal or Headmaster would be competent to give above punishment to Fourth class employees. In case of punishment awarded by competent

officer, the Fourth class employee may appeal to Management Committee. This appeal must be preferred within one month of the date of

intimation of the punishment and Management Committee on receipt of appeal will decide the matter within six weeks. On consideration of all

necessary records and after giving an opportunity of hearing to the employee, if he wants to appear before the Management Committee, it will give

its decision.



Fourth class employee would also have a right to represent against the decision of the Management Committee on his appeal to the District

Inspector of Schools/Regional Inspectress of Girls Schools within one month of the date of intimation of the decision:

Provided that if Management Committee does not give its decision on above appeal within stipulated period of six weeks, the concerned employee

after the expiry of above six weeks may represent directly to District Inspector of Schools/Regional Inspectress of Girls School.

District Inspector of Schools/ Regional Inspectress of Girls School would give its decision within three months from the date of receipt of the

representation and his decision would be final.

Regulations 86 to 98 of this Chapter would apply to presentation, consideration and decision of the representation with necessary changes.

22. As is evident, the above Regulation came to be substituted by notification dated 27.2.1978. Initially, after the above amendment it was

considered by a Division Bench in Committee of Management, Janta Inter College, Kami, Farrukhabad v. District Inspector of Schools,

Farrukhabad and Ors. 1981 UPLBEC 135, which was a case relating to dismissal of a Class III employee and referring to Regulation 31 Chapter

III of the Regulations, this Court observed in para 4 as under :

By means of a notification dated 27.2.1978 Regulation 31 as-existing in Chapter III of the Regulations was introduced. It provides that no

employee of a recognised institution can be awarded the punishments enumerated in that provision, except after prior approval of the District

Inspector of Schools or the Regional Inspectress of Girls Schools. As one of the conditions of service of Respondent No. 3 consequently, he was

entitled to be retained in service till such time as prior approval of the District Inspector of Schools had not been obtained to the decision of the

Committee of Management to determine his punishment by means of an order of dismissal.

23. Again in Rajendra Prasad Gond v. District Inspector of Schools, Jaunpur and Ors. 1990 (1) UPLBEC 279 : 1990 (1) AWC 456, it was

considered by the Division Bench. In para 14 of the judgment an argument raised that Regulation 31 requiring prior approval would apply only to

permanent employees and not to temporary employees was repelled. This Court further held that violation of Regulation 36 (1) by not holding an

oral enquiry would vitiate the order of termination since the procedure prescribed therein is mandatory.

24. In Principal, Rastriya Inter College, Mahrajanj and another Vs. District Inspector of Schools, Mahrajanj and others, another Division Bench

presided by His Lordship M. Katju, J. (as his Lordship then was) dismissed the special appeal and upheld the order of Hon"ble single Judge that

an order of dismissal of a Class IV employee without prior approval of the District Inspector of Schools under Regulation 31 vitiate the dismissal

order.

25. Besides there are some more single Judge judgments on the question as to whether prior approval of D.I.O.S. before dismissing a Class IV

employee is necessary or not, some of which may be referred as under:

(1) Shanker Sharan v. Besall Inter College, Azamgarh and Ors. 1991 (1) UPLBEC 467, wherein the Hon"ble R.B. Mehrotra, J., held an order of

termination without prior approval of D.I.O.S. under Regulation 31, illegal.

(2) Daya Shankar Tewari v. Principal, R.D.B.M. Uchchatar Madhyamik Vidyalaya, Neogaon, Mirzapur and Ors. 1998 ALJ 461 : 1998 (1)

AWC 381, wherein Hon"ble Alok Chakrabarti, J. held that the prior approval under Regulation 31 before termination of a Class IV employee is

mandatory and non-compliance thereof would vitiate the order. (The above judgment was approved by the Division Bench in Principal, Rastriya

Inter College, Bali Nichalaul, District Maharqiganj (supra).

(3) Awadhesh Singh v. District Inspector of Schools and Ors. 1996 (2) ESC 169 : 1996 AWC Supp 543, is the judgment delivered by Hon"ble

Dr. B.S. Chauhan, J. (as his Lordship then was) and in para 8, the Hon"ble Court referred to an earlier judgment of this Court in Bhopal Singh

Verma v. Deputy Director of Education and Ors. 1983 UPLBEC 597, taking the view that prior approval of D.I.O.S. is necessary before

imposing punishment upon a Class III employee followed in Bali Ram Singh and Anr. v. Committee of Management, Amar Bir Inter College,

Dhanapur, Varanasi and Ors. 1993 (3) ESC 57. It also mentioned that the judgment of the Hon"ble single Judge in Bali Ram Singh (supra) was

confirmed by the Division Bench in Special Appeal in 1993 (2) ESC 305.

(4) Principal, P.N.V. Inter College v. D.I.O.S., Hamirpur and Anr. 2007 (1) AWC 253, is the judgment delivered by Hon"ble Vineet Saran, J.

and in para 6, the Court has held that the order of punishment of a Class IV employee without prior approval is not justified in law.

26. It is no doubt true that recently another Division Bench consisting of Hon"ble the Chief Justice A.N. Ray and Ashok Bhushan, J. in the

judgment dated 19.4.2006 in Special Appeal No. 360 of 2006, Ali Ahmad Ansari v. D.I.O.S., Kushinagar and Ors. has taken a view that scheme

of Regulations 31 to 45 Chapter III do not provide that prior approval is required for awarding punishment of removal or termination to a Class IV

employee from District Inspector of Schools. A perusal of the said judgment shows that the various earlier Division Bench judgments taking a view

otherwise have not at all been brought to the notice of the Hon"ble Court and, thus, it is evident that on the question whether prior approval of

D.I.O.S. before dismissing or removing a Class IV employee under Regulation 31 of the Regulations is necessary or not, there are contradictory

judgments of the coordinate Benches, i.e., Division Bench of this Court and normally it would have been proper to refer the case for a verdict on

this aspect by a larger Bench but since the present writ petition can be decided on the first question as to whether there was a valid disciplinary

proceeding conducted against the petitioner or not, I do not find it necessary to detain this matter in view of the findings recorded by this Court that

there was a clear violation of the procedure prescribed under Regulations 36 and 37, Chapter III of the Regulations as no proper disciplinary

enquiry was conducted against the petitioner which vitiates the impugned order of termination as well as the appellate order, I do not find any

reason to keep this matter pending and the question as to whether prior approval is necessary or not may be considered at some later point of time

in some other appropriate case.

27. In view of the above discussion, this Court is clearly of the view that no valid disciplinary proceeding has been conducted against the petitioner

and, therefore, the order of removal passed by the Principal as well as the appellate order, impugned in the writ petition being illegal, deserve to be

set aside.

28. The writ petition is, accordingly, allowed. The order dated 16.7.1998 and the appellate order dated 22.11.1998 are hereby quashed.

29. However, since the charges levelled against the petitioner are quite serious, I find it appropriate to give liberty to the respondents to proceed

afresh by holding an enquiry against the petitioner in accordance with law and to pass appropriate order accordingly. The decision as to whether

the respondent No. 2 propose to hold a fresh enquiry against the petitioner would be taken within one month from the date of production of a

certified copy of this order before him and in case he decides to hold a fresh enquiry, the petitioner would be deemed to continue under suspension

which would be subject to the final order passed by the disciplinary authority. In case the respondent No. 2 decide not to hold any further enquiry

and to drop the matter, the petitioner shall be reinstated without further delay. For the period he has remained out of employment, he however

would be entitled for salary to the extent of 50 per cent only.

30. There shall be no order as to costs.