
L. N. Birla and Others Vs University of Calcutta and Others

None

Court: Calcutta High Court

Date of Decision: Sept. 11, 1978

Acts Referred:

Constitution of India, 1950 " Article 226#WEST BENGAL COLLEGE TEACHERS
(SECURITY OF SERVICE) ACT, 1975 " Section 1, 10, 12, 13, 14

Citation: 83 CWN 698 : (1978) 2 ILR (Cal) 391

Hon'ble Judges: Chittatosh Mookerjee, J; B.C. Ray, J

Bench: Division Bench

Advocate: R.N. Bajoria, B.P. Gupta, S.K. Bagaria, Padma Khaitan, for the Appellant;D.K. De,
Mrs. Sipra Sircar for respondents Nos.1 to 4, S.B. Bhuniya, for the Respondent

Final Decision: Allowed

Judgement

1. The appellants at the material time were the office bearers/members of the Governing Body of the Birla Collage of Science and Education

(hereinafter called the College), which was affiliated to the Calcutta University.

2. On March, 17, 1977, the Principal of the said College had made a written complaint against the respondents 5 and 6 regarding an alleged

incident dated March 15, 1977. According to the appellants the Governing Body of the College by a resolution dated May 24, 1977 had resolved

to initiate an enquiry against the respondents 5 and 6 on the basis of the said complaint of the Principal of the College. It is further alleged that the

Honorary Secretary of the Governing Body in pursuance of the alleged direction of the Governing Body had issued show-cause notice upon the

respondents 5 and 6. A Board of Enquiry was also purported to be appointed to enquire and submit a report in respect of the allegation and the

charges framed against the respondents 5 and 6. It is not necessary for our present purpose to refer to the correspondence between the appellants

and the respondents in respect of the said purported enquiry. According to the appellants, on September 28, 1977, the Board of Enquiry

submitted a report against the respondents 5 and 6. On September 30, 1977, the findings of the Board of Enquiry were placed before a meeting of

the Governing Body of the College. The Governing Body accepted the said findings and resolved that the penalty of dismissal from service be

imposed upon the respondents 5 and 6 on the ground of their being engaged in activities prejudicial to the academic interests of the College. On

September 30, 1977, the Secretary of the Governing Body of the College had communicated the said dismissal orders to the respondents 5 and 6.

The respondents 5 and 6, against the said dismissal orders, had purported to prefer appeals to the University of Calcutta under S. 12 of the West

Bengal College Teachers" (Security of Service) Act, 1975 (hereinafter called the Act).

3. According to the respondents, the Syndicate of the Calcutta University had delegated to the Vice Chancellor of the University authority to hear

the said appeals preferred by the respondents 5 and 6 against their dismissal from service. On September 30, 1977, on the representation of the

General Secretary of the West Bengal College and University Teachers Association, the Vice Chancellor of the Calcutta University had stayed the

orders of dismissal of the respondents 5 and 6 till the University had looked into the matter. On October 3, 1977, the inspector of Colleges,

University of Calcutta conveyed the said order to the Honorary Secretary of the Governing Body of the College. The present appellants being

aggrieved by the said order of stay granted by the Vice Chancellor, Calcutta University moved this Court under Article 226 of the Constitution of

India obtained Civil Rule No.6422(W) of 1977. The respondents contested the said Rule.

4. On January 4, 1978 Amiya Kumar Mookerji, J. made Civil Rule No. 6422(W) of 1977 absolute on the ground that the order of stay dated

September 30, 1977 was passed in breach of the principles of natural justice in as much as no hearing was given to the College Authorities or the

teachers concerned before passing of the said order. But the learned Judge further held that the University had power to grant stay of the order

appealed against by the teachers under S. 12(2) of the above Act. The learned Judges observed that nothing would prevent the University from

passing fresh orders with regard to the appeals of the respondents 5 and 6 in compliance with S. 12(2) of the West Bengal College Teachers"

(Security of Service) Act, 1975. The present appellants have preferred an appeal under Clause 15 of the Letters Patent against the said judgment

of Amiya Kumar Mookerji, J. in Civil Rule No.6422 (W) of 1977 and the same is still pending.

5. On January 5, 1978 the Inspector of College, Calcutta University addressed a letter to the Honorary Secretary of Birla College of Science and

Education inter alia, stating that he had been directed by the Vice Chancellor, Calcutta University to give them notice to show cause before the

Vice Chancellor why appropriate orders for preserving the status quo or other appropriate orders in connection with the appeals of the

respondents 5 and 6 should not be made. The College Authorities were given liberty to submit both personal and written representations and on

January 7, 1978 the Secretary of the Governing Body of the College on behalf of the Governing Body addressed a letter to the Inspector of

Colleges. The Secretary disputed the power of granting stay by the Vice Chancellor and also the authority of the University or the Vice Chancellor

to entertain the appeals of the respondents Nos.5 and 6. The Secretary also made written submissions on the merits of the two appeals and against

the granting of interim orders in favour of the two appellants. On January 9, 1978 the Vice Chancellor, Calcutta University heard the appellants

and a representative of the Governing Body of the College. The Vice Chancellor ordered that the Birla College of Science and Education shall

maintain the status quo ante that is to say to maintain the position as it was prior to 30.9.1977 with regard to the services of Dr. B. P. Singh and Dr.

Roy Choudhury till the final disposal of the appeal. The Vice Chancellor by the same order also directed the appellants to produce certain

additional materials. He also directed the College authorities to submit the original records relating to the disciplinary proceeding against the two

dismissed teachers. The Vice Chancellor of the University of Calcutta had fixed the hearing of the two appeals of January 30, 1978.

6. Thereupon, the present appellants filed an application under Article 226 of the Constitution of India inter alia praying that the order of the Vice

Chancellor dated January 9, 1978 be quashed and the respondents be commanded not to give any effect or further effect to the said order dated

January 9, 1978. On 18th January, 1978 Amiya Kumar Mookerji, J. was pleased to issue Civil Rule No.2411(W) of 1978 and to grant interim

orders. Subsequently, the interim orders were modified and, the Vice Chancellor was given liberty to dispose of the two appeals of the

Respondent Nos.5 and 6 subject to the decision in the said Civil Rule. The Vice Chancellor by his order dated February 14, 1978 allowed the

said two appeals, set aside the dismissal orders and made an order for re-instatement of the respondents Nos.5 and 6.

7. On May 3, 1978 Amiya Kumar Mookerji, J. disposed of the said Rule. The learned Judge quashed the orders of dismissal passed against the

respondents Nos.5 and 6 and all proceedings including the orders of the Vice Chancellor passed upon the appeals preferred by the respondents

Nos.5 and 6. The learned Judge inter alia held that unless the appellate Tribunal under S. 14 of the West Bengal College Teachers" (Security of

Services) Act, 1975 was set up by the State Government, the provisions of the said Act would not be given effect to in as much as the provisions

of the Act constituted a single scheme. His Lordship further made it clear that his said order shall not prevent the members of the Governing Body

of the College from taking any steps whatsoever against the teachers (meaning respondents Nos.5 and 6) under any other law for the time being in

force if they were so advised.

8. On May 10, 1978, the Honorary Secretary of the Governing Body of the College addressed two letters to the respondents Nos.5 and 6. The

text of both the said letters was as follows: -

The Governing Body of the College dismissed you from your service on September 30, 1977 on the ground of misconduct. The Hon"ble High

Court has since held that the entire provisions of the West Bengal College Teachers" (Security of Service) Act, 1975 relating to termination of your

employment, appeal therefrom etc. constituted a single scheme and could not be given effect to unless the Appellate Tribunal was set up by the

State Government and in that view of the matter including the dismissal passed under the said Act including the proceedings taken against you and

the order of Vice Chancellor passed on appeal were all quashed. The Hon"ble High Court made it clear that the said order would not prevent the

College from taking any step against you in any other law for the time being in force.

The Governing Body has since decided in view of the decision of the Hon"ble High Court and without prejudice to any of the rights and

contentions of the college including that your services were validly and lawfully terminated on September 30, 1977 and with a view to avoid all

disputes and controversies in future that your services be and are hereby terminated with immediate effect. The contract of employment dated 30th

June, 1969 provides for a month"s notice and it has been decided by the Governing Body that you would be paid one month"s salary in lieu of

such notice.

Accordingly please note that your services stand terminated with immediate effect and you shall be paid one month"s salary in lieu of the notice.

You may collect all dues from the office of the College on any working day during office hours.

9. The respondents 5 and 6 again preferred appeals under S. 12 of the West Bengal College Teachers" (Security of Service) Act, 1975 against

the said dismissal orders dated May 19, 1978. On May 13, 1978 the Inspector of Colleges, Calcutta University gave notice to the Governing

Body of the College that on May 16, 1978 the Vice Chancellor as the authority duly empowered would hear the matter. The Governing Body was

asked to show-cause why ad interim orders will not be made. On 16th May, 1978 the Honorary Secretary of the Governing Body of the College

had addressed a letter to the Inspector of Colleges, Calcutta University requesting that the matter might not be proceeded with without furnishing

the copies of the petitioners" appeal and without affording opportunity of hearing to the College Authorities.

10. On 17th May, 1978 the Vice Chancellor of the Calcutta University granted stay of the operation of the orders of the termination of services of

the respondents 5 and 6 till the disposal of the appeals preferred by them.

11. On 12th May, 1978 the appellants presented this appeal under Clause 15 of the Letters Patent against the judgment of Amiya Kumar

Mookerji, J. dated May 3, 1978, in so far as the same purported to quash, the dismissal passed by the Governing Body of the College on

September 1977 against the respondents 5 and 6 and the proceedings taken by the Governing Body of the College against the said respondents.

The University of Calcutta, the Vice Chancellor, the Registrar and the Inspector of Colleges of the Calcutta University, who are respondents 1 to 4

have filed a Memorandum of Cross-Objection against the said judgment of Amiya Kumar Mookerji, J. dated 3rd May, 1978. The respondents 5

and 6 have also filed another Memorandum of Cross-Objection. Both sets of the cross-objector respondents have contended that the learned

Single Judge had erred in quashing the orders of the Vice Chancellor passed on appeals preferred by the respondents 5 and 6 under S. 12 of the

West Bengal College Teachers" (Security of Service) Act, 1975 against their dismissal from service by the Governing Body of the College dated

September 19, 1977. According to the respondents the Vice Chancellor had power and authority to hear the said appeals of the respondents 5

and 6.

12. The respondents 1 to 4 have filed an application under Order 41 Rule 27 of the CPC for taking into consideration certain alleged subsequent

events after the judgment was delivered in Civil Rule No.2451(W) of 1978. The respondents 5 and 6 have also prayed that this Court ought to

take notice of the said subsequent events mentioned below. According to these respondents, the appellants had approbated the judgments dated

May 3, 1978 of Amiya Kumar Mookerji, J. quashing the dismissal of the respondents 5 and 6 by acting in conformity with the said judgment. The

College authorities had accepted the said judgment and on May 10, 1978 had passed fresh orders for dismissal against the respondents 5 and 6.

The respondents under S. 12 of the above Act have again preferred appeals against the said subsequent orders of the College Authorities

dismissing them from service. The respondents 1 to 4 have further stated that the State Government by an order published in the Office Gazette

had constituted the Appellate Tribunal under the West Bengal College Teachers" (Security of Service) Act, 1975 with effect from 6th May, 1978.

13. The learned advocate for respondents have submitted that the appellants having accepted the judgment/order of Amiya Kumar Mookerji, J. so

far as the same quashed their orders dated 30.9.77 dismissing respondents 5 and 6 and they were stopped from further persecuting the present

appeal presented by them against the said judgment of Amiya Kumar Mookerji, J. dated 3rd May, 1978. We have heard the learned advocates

for the parties on the said preliminary point and we find no substance in the same. In the facts of this case it cannot be held that the appellant"s

statutory right under Clause 15 of the Letters Patent to prefer an appeal against the aforesaid judgment of Amiya Kumar Mookerji, J. had come to

an end. In the first place, the letters of the Honorary Secretary of the said College dated 10th May, 1978 which we have set out in the earlier

portion of our judgment clearly stated that the Governing Body's decision to terminate the services of the respondents 5 and 6 was without

prejudice to any of their rights and contentions including that the services of the respondents 5 and 6 were validly and lawfully terminated on

September 30, 1977. In considering whether the appellants had approbated the said judgment and whether the appellants are now estopped, we

have to determine whether or not they have accepted any benefit under the said judgment and had thereby deemed to have renounced all their

rights inconsistent with it (vide *C. Beepathuma & ors. v. Velasati Sankarnarayana Kodambolithava & ors.* AIR 1965 SB 241). Further, the

majority decision in *Bhau Ram v. Baij Nath Singh*, AIR 1961 SC 1327, was that in the absence of some statutory provision or of well-recognized

principle of equity, no one can be deprived of his legal rights including his statutory right of appeal. The majority decision in the said case was that a

statutory right of appeal cannot be presumed to have come to an end because the appellant has in the meantime abided by or taken advantage of

something done by the opponent under the decree. In this case, after reserving their rights and contentions about the previous dismissal orders

dated September 3, 1977 the appellants had purported to abide by the order of the learned Single Judge. But in no sense they had taken any

benefit under the said order de hors their claim on merits. Further, in this case there was no question of making a choice between two inconsistent

rights. Therefore, the conditions necessary for the applicability of the doctrine of approbate and reprobate were not present. We, accordingly,

uphold the submission of Mr. Bajoria, learned advocate for the appellants that the principles of law laid down in *Bhau Ram v. Ejaj Nath Singh*

(supra) fully support the right of the appellants to proceed with this appeal. There is another serious impediment in the way of the respondents

pleading that this appeal is not maintainable. The respondents have themselves preferred cross-objections against the judgment of Amiya Kumar

Mookerji, J. dated 3rd May, 1978 so far as the same quashed the orders of the Vice Chancellor under S. 12 of the West Bengal College

Teachers' (Security of Service) Act, 1975. But at the same time the respondents 5 and 6 under S. 12 of the said Act have preferred appeals to

the University against their dismissal from service by letters dated 10th May, 1978 issued by the Honorary Secretary of this College. The

University has entertained the said appeals. Therefore, the appellants may also urge that the respondents have accepted the aforesaid judgment of

Amiya Kumar Mookerji J. and have acted upon the same and, therefore, they are estopped from preferring cross-objection. It is clear that the

action taken by both the appellants and the respondents were without prejudice to their respective rights to prefer appeal/cross objections against

the aforesaid judgment of Amiya Mookerji, J. Therefore, we over-rule the preliminary objection raised by the respondents.

14. We now take up the consideration of the merits of the appeal preferred by the members/office of the Governing Body of the College against

the order of the learned Single Judge quashing the orders of dismissal dated 30th September, 1977. The appellants as petitioners had filed the writ

petition inter alia challenging the jurisdiction of the University to entertain the two appeals preferred by the respondents 5 and 6 under S. 12 of the

West Bengal College Teachers" (Security and Service) Act, 1975. The appellants has also challenged the delegation made by the Syndicate of the

Calcutta University in favour of the Vice Chancellor of the University of Calcutta for hearing these two appeals. The respondents 5 and 6

themselves did not file any writ petition praying for quashing the order of the Governing Body dismissing them with effect from 30th September,

1977. It is also debatable whether a writ would be available against the Governing Body of the above named. This Court while disposing of the

said writ petition of the present appellants, could not validly quash orders made by the appellants themselves. As already stated, the learned Single

Judge was required to determine whether or not the two appeals under S. 12 of the Act preferred by the two appeals of the respondents 5 and 6

were maintainable and whether the order passed by the Vice Chancellor in respect of them were lawful and within his jurisdiction. In case the court

found that the appeals of the respondents 5 and 6 were maintainable and the orders passed thereon were valid, the Civil Rule obtained by the

appellants was liable to be discharged. If, on the other hand, it was found that the said appeals of the respondents 5 and 6 did not lie or that the

Vice Chancellor had no jurisdiction to entertain and hear the said appeals, appropriate orders might have been made by this Court for quashing the

appellate proceedings. But, in either view of the matter, the Court entertaining a writ petition filed by the College Authorities could not have

quashed the orders passed by the College Authorities themselves. Mr. Bajoria, learned Advocate for the appellants, has further pointed out that

the right of the Governing Body of a college to pass disciplinary orders against the teachers of the college were not, for the first time, created by

the West Bengal College Teachers" (Security of Service) Act, 1975. The said Act purported to regulate and modify the powers of the Governing

Body over the teachers of the College by inter alia, making certain provisions for security of service of the college teachers. The Act has inter alia

laid down the procedure for imposing penalties; the Act also has provided for appeals to the University by the teachers against orders imposing

penalties under S. 9(1) of the Act; the Act also contains provisions for constitution of an Appellant Tribunal. In case appellants are right in their

submissions that until the Appellate Tribunal under S. 14 of the Act was constituted the provisions of the Act relating to imposition of penalties

under S. 9 and for preferring appeals therefrom under S. 12 did not come into force, then the college teachers would continue to be governed by

the terms and conditions of their services which existed prior to the commencement of the Act.

15. The next submission of Mr. Bajoria, is, that at the date of the presentation of the appeals by the respondents 5 and 6 to the University against

the resolution of the Governing Body of the College dated 30th September, 1977 neither the University nor its delegate was competent to exercise

the appellate powers under S. 12 of the West Bengal College Teachers" (Security of Service) Act, 1975. According to Mr. Bajoria until and

unless the appellate tribunal had been constituted under S. 14 of the said Act and the provisions of S. 12 were still inoperative, S. 14 did not leave

any discretion with the State Government and the State Government was bound to constitute an appellate tribunal and; therefore, until and unless

such an appellate tribunal is constituted, there could be no question of the University entertaining appeals against order of the College Authorities

imposing penalties upon the college teachers. Mr. Bajoria submitted that Ss. 12 and 14 are so in separately connected with each other that until

and unless the higher tribunal under S. 14 is constituted, the right of appeal under S. 12 of the Act would remain ineffective and unavailable against

the orders under S. 9 of the Act. The learned Single Judge while making the Civil Rule absolute has upheld this submission of the appellants.

16. Having given our anxious consideration to the matter, we are unable to agree with the above proposition. The West Bengal College Teachers"

(Security of Service) Act, 1975 was enacted to provide for the security of service of teachers of affiliated constituent and government sponsored

colleges of West Bengal. Sub-section (3) of S. 1 of the said Act. laid down that the Act shall come into force on such date as the State

Government may by notification in the Official Gazette appoint. On 9th October, 1975 the Notification No.1051 C.C. was published in pursuance

of sub-s. (3) of s. 1 of the said Act, appointing 19th day of October, 1975 as the date on which the said Act came into force. Therefore, 9th

October, 1975 was the date of the commencement of the provisions of the West Bengal College Teachers" (Security of Service) Act, 1975 and

all the provisions of the said Act including S. 12 had come into force. The Governing Body of the college itself purported to follow the provisions

of the said Act in the matter of imposing penalties upon the respondents 5 and 6. The Honorary Secretary of the College on behalf of the

Governing Body by a letter dated 30th September, 1977 forwarded to the Vice Chancellor, University of Calcutta two copies of the orders of the

Governing Body imposing penalties upon the respondents 5 and 6 in accordance with sub-s. (1) of S. 9 of the West Bengal Act XXXIV of 1975.

The Secretary further intimated that the said communication was being made in accordance with S. 10 of the said Act.

17. Section 10 inter alia requires that the order of the Governing Body shall be communicated to the teacher concerned and the same shall also be

reported to the University to which such college is affiliated. Section 12 of the Act confers a substantive right upon a teacher who is aggrieved by

an order imposing any of the penalties referred in sub-s. (1) of S. 9, to prefer an appeal within 30 days from the date of such order to the

University to which the college is affiliated. An order of penalty under S. 8 by the Governing Body of the college upon any teacher of the college is

subject to an appeal under S. 12 of the Act. The said S. 12 does not qualify that such right to prefer appeal against any other imposing penalties

shall not be exercised until the Tribunal u/s 14 is set up. In other words, the right of appeal under S. 19 has not been made conditional upon

constitution of the appellate Tribunal under S. 14 of the said Act. The object of the Act no doubt is to set up a hierarchy of quasi judicial-

authorities/tribunals. In the lowest tier is the domestic enquiry by the Governing Body. The University has been constituted the appellate authority

from the orders of the Governing Body imposing any of the penalties in sub-s. (1) of S. 9. The Appellate Tribunal constituted under S. 14 by the

State Government is the apex. The Governing Body of a College or a teacher may prefer an appeal against an order passed under S. 12 of the

said appellate tribunal within the prescribed time.

18. In this case, simultaneously with the commencement of the West Bengal College Teachers" (Security of Service) Act, 1975 the State

Government did not constitute the appellate Tribunal under S. 14. On 6th May, 1978 the State Government under S. 14 of the Act had constituted

the appellate tribunal. But we are not prepared to hold that because of the delay on the part of the State Government in constituting the appellate

tribunal under S. 14, a teacher against whom penalty under sub-s. (1) of S. 9 of the said Act has been in the meantime imposed shall be deprived

of his right to prefer an appeal to the University under S. 12. As soon as the Act including s. 12 thereof came into force, the University became

competent to exercise appellate powers under S. 12, because the Act did not contemplate any notification or order for vesting of such appellate

powers upon the University. In case, we accept the submissions of the learned advocate for the appellants, that the right of appeal under S. 12

would remain suspended until and unless the appellate Tribunal under S. 14 of the Act is constituted., it would mean that in spite of the State

Government"s notification under S. 1(3) of the Act, S. 12 was not brought into force. In other words, the court would be required to hold that

even though by a notification the entire Act had come into force, the commencement of S. 12 was postponed till the State Government had

constituted the appellate tribunal under S. 14(1) of the Act. We are not prepared to read into the Act something which is not there or to defer the

date of the commencement of the Act contrary to the clear intentions of the Act itself. As soon as the Act came into force, power of the Governing

Body of a college which was governed by the said Act to impose upon teacher of the college any of the penalties specified in S. 9(1) would be

regulated by the provisions of the said Act. In other words, the said powers of the Governing Body must be exercised in compliance with the

provisions of the said Act. In this case, the Governing Body of the college concerned also purported to act and proceed under the Act in the

matter of imposing penalties upon the respondents 5 and 6. When such penalty orders imposed by Governing Body were communicated to

teachers concerned, they had right to present appeals to the University. There is no indication in the Act that such right of a teacher to prefer

appeal under S. 12 would remain in abeyance or would be deferred till the higher tribunal under S. 14 of the Act is constituted by the State

Government. Because of a possible time lag between the commencement of the Act and the constitution of the appellate Tribunal under S. 14, a

teacher upon whom a penalty is imposed under S. 9 of the Act cannot be deprived of his right to present an appeal to the University. As already

stated, as soon as the Act was brought into force the University became competent to entertain appeals under S. 12 and the exercise of the said

appellate powers of the University cannot be denied because the tribunal which may entertain appeals from the orders of the University made

under S. 12 may not have been constituted.

19. In this proceeding arising under Article 226 of the Constitution, it is not relevant to consider whether the civil court would be competent to

entertain a suit in respect of orders made under S. 9 or under S. 12 when no appellate tribunal under S. 14 had been constituted. Section 16 of the

Act had provided that the decision of the appellate tribunal shall be final and no suit or proceeding shall lie in any civil court in respect of the matter

required to be referred to the said tribunal. Section 16 of the Act, in the first place, expressly has ousted civil court's jurisdiction inter alia, in

respect of matters required to be referred to the said tribunal under S. 14. The Act, however, does not contain any express provision for making

the decision of the University made under S. 12 of the Act final and also for ousting the civil court's jurisdiction. In this appeal arising out of a writ

proceeding we are not called upon to decide to what extent the civil court's jurisdiction has been ousted in respect of orders and decisions made

by different authorities under the Act. Because there could be no question of the said Act excluding this court's jurisdiction under Article 226 of

the Constitution in respect of such orders and decisions made under the said Act.

20. The Full Bench decision in Mahendra Nath Roy Vs. Delraddi Chakdar and Another, , has no relevance in the present context. The Full Bench

in Mahendra Nath Roy's case (supra) inter alia held that the jurisdiction of a civil court to entertain a suit between a bargadar and the owner

whose land the bargadar cultivates with regard to any of the matters specified in sub-s. (1) of S. 7 of the West Bengal Bargadar's Act, 1950 was

not barred by sub-s. (2) of S. 9 of the said Act where no Board has been established under the said Act for the local area within which the land in

question is situated. The Full Bench inter alia held that S. 6(1) of the Bargadars Act, 1950 was not mandatory but discretionary and it was optional

for the State Government to establish a Bhag Chas conciliation Board in any particular local area. According to the Full Bench, the jurisdiction to

the civil court was not excluded under S. 9(2) of the Bargadars Act, 1950 when a Board had not been established in any particular area. When the

State Government failed to establish a Board, the civil court could not be deprived of all its powers or the right of a person affected to take

recourse to a remedy by way of suit cannot be barred. Mr. Bajoria, learned advocate for the appellant, submitted, with reference to the

observations of the Full Bench decision *Mahendra Nath Roy v. Delraddi Chakdar & Anr.* (supra), at page 289 of the reports that S. 14 of the

West Bengal College Teachers" (Security of Service) Act, 1975 was mandatory and not directory and, therefore, the State Government had a

duty to constitute the appellate tribunal under S. 14. In our view, the question whether S. 14 was mandatory or not may be a relevant

consideration for determining whether the civil court's jurisdiction has been excluded from the date of commencement of the Act or from the date

on which the appellate tribunal was actually constituted. But the said question whether the State Government has a duty or on opinion under S. 14

is not at all germane in the matter of presentation of appeals under S. 12 of the Act. As already stated when a penalty is imposed under S. 9, a

right accrues in favour of the aggrieved teacher to prefer an appeal to the University in terms of S. 12. The University's appellate power under S.

12 has not been either expressly or impliedly made dependant or conditional upon constitution of an appellate tribunal which would entertain

appeals from the order under S. 12.

21. For the aforesaid reasons, we reach the conclusion that from the date of the commencement of the West Bengal College Teachers" (Security

of Service) Act, 1975 the University became competent to entertain appeals against orders passed under S. 9(1) of the Act by the Governing

Bodies of the Colleges which came within ambit of the said Act. Thus, with effect from the date of the commencement of the Act, a teacher of such

a college required a vested right to present an appeal to the University against the orders of the Governing Bodies imposing any of the penalties

specified in S. 9(1) of the Act.

22. The next submission of Mr. Bajoria is that even assuming that the right of appeal under S. 12(1) was available even before the constitution of

the appellate tribunal under S. 14, in the instant case, the Vice Chancellor of Calcutta University had no jurisdiction, in the absence of a valid

delegation of powers under S. 12 to entertain the appeals of the respondents 5 and 6.

23. The University is the appellate authority under S. 12 of the West Bengal College Teachers" (Security of Service) Act, 1975. Section 13 of the

said Act empowers the University to delegate the powers conferred upon it by S. 12 to such authority or officer not below the rank of Deputy

Inspector of Colleges as the University may specify. The expression "University" has not been defined in the West Bengal College Teachers"

(Security of Service) Act, 1975. Therefore, Mr. Bajoria, learned advocate for the appellants, correctly submitted that with reference to orders

passed under S. 9 by the Governing Bodies of the colleges affiliated to the Calcutta University, the meaning of the expression "University

appearing in S. 12 of the Act should be ascertained by looking into the provisions of the Calcutta University Act, 1966. Section 1(2) of the

Calcutta University Act, 1966 is as follows: -

The University means the University of Calcutta as constituted under this Act.

The Chapter II of the said Act deals with the University and its powers Section 3(1) of the said Act lays down "the first Chancellor and the first

Vice Chancellor of the University and the first members of the Senate, the Syndicate and the Academic Council, and all persons who may

hereafter become such officers or members, so long as they continue to hold such office or membership, shall constitute a body corporate by the

name of the University of Calcutta." In other words, the University of Calcutta consists of: -

(a) The Chancellor, (b) The Vice-Chancellor, (c) The Senate and (d) The Academic Council.

Each one of these persons/bodies are constituents of the University of Calcutta which is a body corporate having perpetual succession. The

Section 4 of the said Act enumerates the powers of the University. The Vice Chancellor under S. 6 of the Act is one of the officers of the

University and his powers and duties have been enumerated in S. 9 of the said Act. But he has not been vested with some and not all the powers

of the University of Calcutta. Apart from his powers of general control and supervisions as specified in sub-s. (4) of S. 9 of the Act, the Vice

Chancellor can exercise such other powers and discharge such other duties as may be delegated to him by any other authority or body of the

University or as may be prescribed by statutes, ordinances and regulations. It is however not necessary to set out in detail the powers of the

different authorities of the University including the Syndicate as provided in Chapter V of the Calcutta University Act, 1966. It would be sufficient

to point out that S. 23 of the Calcutta University Act, 1966 has not specifically provided that the Syndicate shall have powers to hear appeal which

may lie to the University under any law.

24. The respondents in this appeal submitted that S. 23(2) of the Calcutta University Act, 1966 has conferred upon the Syndicate all powers of the

University not otherwise provided for in the Act. In other words, S. 23(a) has vested the Syndicate with the residuary powers of the University

and, therefore, accordingly the Syndicate could exercise the said appellate powers of the University under S. 12 of the West Bengal College

Teachers" (Security of Service) Act, 1975. In the instant case, the Syndicate had validly delegated the said appellate tribunal powers under S. 12

read with S. 13 of the West Bengal College Teachers" (Security of Service) Act, 1975.

25. It is, therefore, necessary to examine the scope and effect of s. 23(2) of the Calcutta University Act, 1966. The said sub-section consists of two

parts: (a) all powers of the University not otherwise specifically provided have been vested upon the Syndicate and (b) the Syndicate shall have

necessary powers to give effect to the provisions of the Calcutta University Act. Undoubtedly, the first part confers residuary powers of the

University upon the Syndicate. The second part of s. 23(2) authorizes the University to exercise incidental and consequential powers to give effect

to the provisions of the Calcutta University Act. Mr. Bajoria, learned advocate for the appellants, submitted before us that the Syndicate's

residuary powers under S. 23(2) are confined to such powers of the University, which have been mentioned under s. 4 of the Calcutta University

Act, 1966 but have allocated to any of its constituent authorities. In other words, the submission of Mr. Bajoria is that S. 4 enumerates the totality

of powers of the University. The subsequent sections of the Calcutta University Act have purported to allocate and distribute most of these powers

among the officers and the authorities constituting the Calcutta University. According to Mr. Bajoria the Syndicate under S. 23(2) may exercise

only those powers of the University which have not been specifically distributed among these officers and authorities. But in no event the Syndicate

in the name of the University can exercise any power which is not mentioned in any of the clauses of S. 4 of the Act. Although the above submissions

appear to be attractive at the first sight, upon further consideration we are unable to accept the same. No doubt, the Calcutta University being a

body corporate, its powers, duties and functions are primarily derived from the Calcutta University Act, 1966 and the statutes and regulations

framed thereunder. But by subsequent legislation additional powers could be conferred upon the Calcutta University. The West Bengal College

Teachers' (Security of Service) Act, 1975 vested the Universities in West Bengal including the Calcutta University with powers to entertain

appeals by the teachers against whom penalties under S. 9(1) of the Act might be imposed. In other words, the West Bengal College Teachers'

(Security of Service) Act, 1975 has given additional powers to the University. It is true that under the Calcutta University Act the Syndicate is one

of the several authorities constituting the University and the Syndicate does not enjoy all the powers of the University. But under the Calcutta

University Act apart from the powers allocated to it under sub-s. (1) of S. 23 of the Calcutta University Act, the Syndicate may also exercise the

residuary powers of the University. When the Calcutta University Act, 1966 enacted, the appellate powers of the University under S. 12 of the

West Bengal College Teachers' (Security of Service) Act, 1975 was not even in contemplation. Subsequently, the Universities including the

Calcutta University were constituted as the appellate authorities under S. 12 of the said Act. Mr. Bajoria did not urge before us that the Calcutta

University itself cannot exercise such appellate powers under S. 12 of the said Act in the absence of same being specified in S. 4 of the Calcutta

University Act by amendment of the Calcutta University Act. In fact, we find no legal impediment in the way of conferment of such appellate

powers under the University by a subsequent statute, namely, the West Bengal College Teachers" (Security of Service) Act, 1975. The University

of Calcutta is composed of (1) Chancellor, (2) Vice Chancellor, (3) Senate, (4) Syndicate and (5) Academic Council. It is not practicable for the

Calcutta University itself to discharge such appellate powers and it must exercise its appellate powers through one of these authorities. In the

absence of any specific provision either in the Calcutta University Act or in the West Bengal College Teachers" (Security of Service) Act, 1975,

allocating or distributing such appellate powers under S. 12 of the 1975 Act, the Syndicate which has been vested with the residuary powers of the

University could validly exercise on behalf of the University the said appellate powers to entertain appeals of teachers against orders imposing

penalties by the Governing Bodies of colleges affiliated to the Calcutta University. The Section 13 of the West Bengal College Teachers" (Security

of Service) Act, 1975 recognized that the appellate powers under S. 12 of the Act may be delegated.

26. We are not prepared to accept the submission of Mr. Bajoria that S. 23(2) has empowered the Syndicate to exercise only those powers of the

University which have been conferred upon the University under S. 3 of the Calcutta University Act but not allocated or distributed to any of the

authorities under the Act. It is significant to note that words "specifically provided for" have not been qualified by the expression "in the Calcutta

University Act". Therefore, once it is held that the University of Calcutta has been entrusted with additional powers under the West Bengal College

Teachers" (Security of Service) Act, 1975 without specifying the officer or the authority who may exercise such additional powers, the Syndicate

would be legally entitled to exercise the said additional power of the University.

27. In the result, we reach the conclusion that the expression "all powers of the University not otherwise specifically provided for" in S. 23(2) of the

Calcutta University Act would include not only the residuary powers of the University under the Calcutta University Act itself but also the powers

of the University conferred by any other law and which have not been specifically distributed or delegated by the said law to any officer or

authority of the University. Neither the Calcutta University Act nor the West Bengal College Teachers" (Security of Service) Act, 1975 does

specify that which authorities composing the University would exercise the appellate powers of the University under S. 12 of the Act of 1975.

Therefore, the Syndicate can exercise the said powers by either itself acting as the appellate authority or by delegating the same in terms of S.

13 of the West Bengal College Teachers" (Security of Service) Act, 1975. Accordingly, the Syndicate of the Calcutta University had validly

empowered the Vice Chancellor to hear and dispose of the appeals preferred by the respondents 5 and 6 against their removal.

28. Therefore, the judgment of the learned Single Judge cannot be sustained. The two appeals of the respondents 5 and 6 under S. 12 were

maintainable in law and the Vice Chancellor was entitled to Act as the appellate authority under S. 12 read with S. 13 of the West Bengal College

Teachers" (Security of Service) Act, 1975. We also set aside the order of the learned Single Judge that the orders of dismissal passed by the

Governing Body of the College were not valid. We, however, express no opinion upon the merits of the order of the Vice Chancellor disposing of

the two appeals under S. 12 of the Act. We have not also decided whether or not the dismissals of the respondents Nos.5 and 6 were lawful. All

the parties would be entitled to proceed further in accordance with law in respect of the said appellate decision of the Vice Chancellor under S. 12

of the Act.

29. Subject to these observations, we allow this appeal, set aside the judgment appealed against and we discharge the Civil Rule No. 2411(W) of

1978. The cross-objections are also allowed to the above extent.

30. There will be no order as to costs.

31. On the prayer of Mr. Bajoria, there will be stay of the operation of this order till one week after the re-opening of the Court after the long

vacation. But, we make it clear that at this stage, we are not deciding which body is the lawfully constituted Governing Body of the College.

Therefore, we need not consider the subsequent event of conversion of the College into a Sponsored Institution and the appointment of an Ad hoc

Committee.

32. Let the appeal be put up ""For Orders"" one week after the reopening of the Court after the long Puja Vacation regarding disbursements of the

moneys deposited in terms of the interim order.

B.C. Roy, J.

33. I agree.