

(1978) 09 CAL CK 0020

Calcutta High Court

Case No: F.M.A. No. 517 of 1978, C.O.T. 1353 and 1918 of 1978

L.N. Birla

APPELLANT

Vs

University of Calcutta

RESPONDENT

Date of Decision: Sept. 11, 1978

Acts Referred:

- Calcutta University Act, 1966 - Section 1(2), 23, 23(1), 23(2), 3
- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Constitution of India, 1950 - Article 226
- West Bengal Bargadars Act, 1950 - Section 6(1), 7(1), 9(2), 9(4)
- West Bengal College Teachers (Security of Service) Act, 1975 - Section 1(3), 10, 12, 12(2), 13

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 and Padma Khaitan, for the Appellant; D.K. De, Sipra Sircar for Respondents Nos. 1 to 4 and S.B. Bhuniya, for the Respondent

Judgement

Chittatosh Mookerjee, J.

The Appellants at the material time were the office-bearers members of the Governing Body of the Birla College 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 Nos. 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 Nos. 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 Nos. 5 and 6. A Board of Enquiry was also purported to be appointed to enquire and submit a report in respect of the allegations and the charges framed against the Respondents Nos. 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 Nos. 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 penalties of dismissal from service be imposed upon the Respondents Nos. 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 Nos. 5 and 6. The Respondents Nos. 5 and 6, against the said dismissal orders, had purported to prefer appeals to the University of Calcutta u/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 the authority to hear the said appeals preferred by the Respondents Nos. 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 Nos. 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 and obtained C.R. No. 6422(W) of 1977. The Respondents contested the said Rule.

4. On January 4, 1978, Amiya Kumar Mookerji J. made C.R. 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 inasmuch 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 the power to grant stay of the order appealed against by the teachers u/s 12(2) of the above Act. The learned Judge observed that nothing would prevent the University from passing fresh orders with regard to the appeals of the Respondents Nos. 5 and 6 in compliance with Section 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 C.R. No. 6422(W) of 1977 and the same is still pending.

5. On January 5, 1978, the Inspector of Colleges, 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 Nos. 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 September 30, 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 proceedings against the two dismissed teachers. The Vice-Chancellor of the University of Calcutta had fixed the hearing of the two appeals on 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 January 8, 1978, Amiya Kumar Mookerji J. was pleased to issue C.R. 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 Respondents 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 u/s 14 of the West Bengal College Teachers" (Security of Service) Act, 1975, was set up by the State Government, the provisions of the said Act would not be given effect to inasmuch 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 the 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 services 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 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 Nos. 5 and 6 again preferred appeals u/s 12 of the West Bengal College Teachers" (Security and Service) Act, 1975, against the said dismissal orders dated May 10, 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 shall not be made. On May 16, 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 May 17, 1978, the Vice-Chancellor of the Calcutta University granted stay of the operation of the orders of the termination of services of the Respondents Nos. 5

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

11. On May 12, 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 orders of dismissal passed by the Governing Body of the College in September 1977 against the Respondents Nos. 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 Nos. 1 to 4, have filed a Memorandum of Cross-Objection against the said judgment of Amiya Kumar Mookerji J. dated May 3, 1978. The Respondents Nos. 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 Nos. 5 and 6 u/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 Nos. 5 and 6.

12. The Respondents Nos. 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 C.R. No. 2441 (W) of 1978. The Respondents Nos. 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 approached the judgment dated May 3, 1978, of Amiya Kumar Mookerji J. quashing the dismissal of the Respondents Nos. 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 Nos. 5 and 6. The Respondents u/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 Nos. 1 to 4 have further stated that the State Government by an order published in the Official Gazette had constituted the Appellate Tribunal under the West Bengal College Teachers" (Security of Service) Act, 1975, with effect from May 6, 1978.

13. The learned Advocate for the 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 September 30, 1977, dismissing the Respondents Nos. 5 and 6 and they were estopped from further prosecuting the present appeal presented by them against the said judgment of Amiya Kumar Mookerji J. dated May 3, 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 Appellants" 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 May 10, 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 Nos. 5 and 6 was without prejudice to any of their rights and contentions including that the services of the Respondents Nos. 5 and 6 were validly and lawfully terminated on September 30, 1977. In considering whether the Appellants had approached 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. Beepathumma and Others Vs. V.S. Kadambolihaya and Others,](#), Further, the majority decision in *Bhau Ram v. Baij Nath Singh* AIR 1961 S.C. 1327 was that in the absence of some statutory provision or of well-recognised 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 order 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. Baij 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 May 3, 1978, so far as the same quashed the orders of the Vice-Chancellor u/s 12 of the West Bengal College Teachers' (Security of Service) Act, 1975. But, at the same time the Respondents Nos. 5 and 6 u/s 12 of the said Act have preferred appeals to the University against their dismissal from service by letters dated May 10, 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-objection against the aforesaid judgment of Amiya Kumar 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-bearers of the Governing Body of the College against the order of

the learned Single Judge quashing the orders of dismissal dated September 30, 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 Nos. 5 and 6 u/s 12 of the West Bengal College Teachers" (Security of Service) Act, 1975. The Appellants had also challenged the delegation made by the Syndicate of the Calcutta University in favour of the Vice Chancellor of the University for hearing these two appeals. The Respondents Nos. 5 and 6 themselves did not file any writ petition praying for quashing the order of the Governing Body dismissing them with effect from September 30, 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 u/s 12 of the Act preferred by the two appeals of the Respondents Nos. 5 and 6 were maintainable and whether the orders 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 Nos. 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 Nos. 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 u/s 9(1) of the Act, the Act also contains provisions for constitution of an Appellate Tribunal. In case the Appellants are right in their submissions that until the Appellate Tribunal u/s 14 of the Act was constituted the provisions of the Act relating to imposition of penalties u/s 9 and for preferring appeals therefrom u/s 12 did not come into force, then the College teachers would be continued 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 Nos. 5 and 6 to the University against the resolution of the Governing Body of the College dated September 30, 1977, neither the University nor its delegate was competent to exercise the appellate powers u/s 12 of the West

Bengal College Teachers" (Security of Service) Act, 1975. According to Mr. Bajoria, until and unless the appellate Tribunal had constituted u/s 14 of the said Act and the provisions of Section 12 were still inoperative. Section 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 Sections 12 and 14 are so in separately connected with each other that until and unless the higher Tribunal u/s 14 is constituted, the right of appeal u/s 12 of the Act would remain ineffective and unavailable against the orders u/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 in West Bengal. Sub-section (3) of Section 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 October 9, 1975, the Notification No. 1051 C.C. was published in pursuance of Sub-section (3) of Section 1 of the said Act, appointing October 9, 1975, as the date on which the said Act shall come into force. Therefore, October 9, 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 Section 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 Nos. 5 and 6. The Honorary Secretary of the College, on behalf of the Governing Body by a letter dated September 30, 1977, forwarded to the Vice-Chancellor, University of Calcutta, two copies of the orders of the Governing Body imposing penalties upon the Respondents Nos. 5 and 6 in accordance with Sub-section (1) of Section 9 of the West Bengal Act XXXIV of 1975. The Secretary, further, intimated that the said communication was being made in accordance with Section 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-section (1) of Section 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 u/s 8 by the Governing Body of the College upon any teacher of the College is subject to appeal u/s 12 of the Act. The said Section 12 does not qualify that such right to prefer appeal against any order imposing penalties shall not be exercised until the Tribunal u/s 14 is set up. In other words, the right of appeal u/s

12 has not been made conditional upon constitution of the appellate Tribunal u/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-section (1) of Section 9. The appellate Tribunal constituted u/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 u/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 u/s 14. On May 6, 1978, the State Government u/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 u/s 14, a teacher against whom penalty under Sub-section (1) of Section 9 of the said Act has been in the meantime imposed, shall be deprived of his right to prefer an appeal to the University u/s 12. As soon as the Act including Section 12 thereof came into force, the University became competent to exercise appellate powers u/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 submission of the learned Advocate for the Appellants, that the right of appeal u/s 12 would remain suspended until and unless the appellate Tribunal u/s 14 of the Act is constituted, it would mean that in spite of the State Government's notification u/s 1(3) of the Act, Section 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 Section 12 was postponed till the State Government had constituted the appellate Tribunal u/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 intention of the Act itself. As soon as the Act came into force, the power of the Governing Body of a College which was governed by the said Act to impose upon a teacher of the College any of the penalties specified in Section 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 Nos. 5 and 6. When such penalty orders imposed by the Governing Body were communicated to the 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 u/s 12 would remain in abeyance or would be deferred till the higher Tribunal u/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 u/s 14, a teacher upon whom a penalty is imposed u/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 u/s 12 and the exercise of the said appellate powers of the University can, not be denied because the Tribunal which may entertain appeals from the orders of the University made u/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 u/s 9 or u/s 12 when no appellate Tribunal u/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 u/s 14. The Act, however, does not contain any express provision for making the decision of the University made u/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 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-section (1) of Section 7 of the West Bengal Bargadar's Act, 1950 was not barred by Sub-section (2) of Section 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 Section 6(1) of the Bargadars Act, 1950, was not mandatory but discretionary and it was optional for the State Government to establish a Bhagchas Conciliation Board in any particular local area. According to the Full Bench, the, jurisdiction of the civil Court was not excluded u/s 9(2) of the Bargadars Act, 1950, when a Board had not been established in any particular area. When the State Government fails 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 Supra (289) that Section 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 u/s 14. In our view, the question whether Section 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 the 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 an option u/s 14 is not at all germane in the matter of presentation of appeals u/s 12 of the Act. As already stated when a penalty is imposed u/s 9, a right accrues in favour of the aggrieved teacher to prefer an appeal to the University in terms of Section 12. The University's appellate power u/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 u/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 u/s 9(1) of the Act by the Governing Bodies of Colleges which came within the ambit of the said Act. Thus, with effect from the date of the commencement of the Act, a teacher of such a College acquired a vested right to present an appeal to the University against the orders of the Governing Bodies imposing any of the penalties specified in Section 9(1) of the Act.

22. The next submission of Mr. Bajoria is that even assuming that the right of appeal u/s 12(1) was available even before the constitution of the appellate Tribunal u/s 14 in the instant case, the Vice-Chancellor, Calcutta University, had no jurisdiction, in the absence of a valid delegation of powers u/s 12 to entertain the appeals of the Respondents Nos. 5 and 6.

23. The University is the appellate authority u/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 Section 12 to such authority or officer not below the rank of a 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 u/s 9 by the Governing Bodies of the Colleges affiliated to the Calcutta University, the meaning of the expression "University" appearing in Section 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.

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. Section 4 of the said Act enumerates the powers of the University. The Vice-Chancellor under Section 6 of the Act is one of the officers of the University and his powers and duties have been enumerated in Section 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 supervision as specified in Sub-section (4) of Section 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 chap. V of the Calcutta University Act, 1966. It would be sufficient to point out that Section 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 Section 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, Section 23(2) 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 u/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 powers u/s 12 read with Section 13 of the West Bengal College Teachers' (Security of Service) Act, 1975.

25. It is, therefore, necessary to examine the scope and effect of Section 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 Section 23(2) authorises 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 u/s 23(2) are confined to such powers of the University, which have been mentioned u/s 4 of the Calcutta University Act, 1966, but have not allocated to any of its constituent authorities. In other words, the submission of Mr. Bajoria is that Section 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 u/s 23(2) may exercise only these 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 Section 4 of the Act. Although the above submissions appears 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 u/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-section (1) of Section 23 of the Calcutta University Act, the Syndicate may also exercise the residuary powers of the University. When the Calcutta University Act, 1966, was enacted, the appellate powers of the University u/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 u/s 12 of the said Act. Mr. Bajoria did not urge before us that the Calcutta University itself cannot exercise such appellate powers u/s 12 of the said Act in the absence of same being specified in Section 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 (i) Chancellor, (ii) Vice-Chancellor, (iii) Senate, (iv) Syndicate and (v) 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 u/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. Section 13 of the West Bengal College Teachers" (Security of Service) Act, 1975, recognized that the appellate powers u/s 12 of the Act may be delegated.

26. We are not prepared to accept the submission of Mr. Bajoria that Section 23(2) has empowered the Syndicate to exercise only those powers of the University which have been conferred upon the University u/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 powers 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 Section 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 u/s 12 of the Act of 1975. Therefore, the Syndicate can exercise the said powers either by itself acting as the appellate authority or by delegating the same in terms of Section 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 Nos. 5 and 6 against their removal.

28. Therefore, the judgment of the learned Single Judge cannot be sustained. The two appeals of the Respondents Nos. 5 and 6 u/s 12 were maintainable in law and the Vice-Chancellor was entitled to act as the appellate authority u/s 12 read with Section 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 u/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 u/s 12 of the Act.

29. Subject to these observations, we allow this appeal, set aside the judgment appealed against and we discharge the C.R. 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 reopening 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. Ray, J.

33. I agree.