

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

OP (CAT).No. 120 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 539/2013 of CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 10-07-2015

PETITIONER(S) /APPLICANT:

DR.B.ASHOK IAS AGED 42 YEARS
S/O.SRI.B.BALASUNDARAM, VICE-CHANCELLOR
KERALA VETERINARY AND ANIMAL SCIENCES UNIVERSITY
POOKKODE, WAYANAD DISTRICT, RESIDING AT CAMP HOUSE
KERALA VETERINARY AND ANIMAL SCIENCES UNIVERSITY
KALPETTA P.O., WAYANAD-673576.

BY ADVS.SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH
SRI.C.P.ANIL RAJ
SRI.JOS LEO JOSE

RESPONDENT(S) /RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI-110 001.
3. DR.K.M.ABRAHAM IAS
(ENQUIRY OFFICER APPOINTED AS PER GO DT.8-11-2012 IN
THE MATTER OF INQUIRY AGAINST THE APPLICANT)
PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT
GOVERNMENT OF KERALA, 3RD FLOOR, SECRETARIAT ANNEX
THIRUVANANTHAPURAM-695001.
4. CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, REPRESENTED BY ITS REGISTRAR
MANAPPATTIPARAMBU, KALOOR, KOCHI-682017.

R2&4 BY ADV. SMT.LAILA I.S. , CGC
R3 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1 BY ADV.REKHA VASUDEVAN, GOVERNMENT PLEADER

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 21-08-
2015, ALONG WITH OPCAT. 121/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : TRUE COPY OF THE OA 539/2013 DT.10-6-2013.

ANNEXURE A-11 - PHOTOCOPY OF THE ARTICLES OF CHARGE ALONG WITH THE COVERING LETTER NO.86694/SPL.A1/2012/GAD DATED 16.5.2013 OF THE FIRST RESPONDENT.

ANNEXURE A1 - PHOTOCOPY OF THE NOTIFICATION NO.GS3-2588/2010 DATED 29.12.2010 OF THE SECRETARY TO GOVERNOR/CHANCELLOR

ANNEXURE A2 - PHOTOCOPY OF THE GO(RT) NO.7977/2011/GAD DATED 21.10.2011 OF THE FIRST RESPONDENT.

ANNEXURE A3 - PHOTOCOPY OF THE JUDGMENT DATED 30.07.2012 IN W.A. NO.347/12 OF THE HON'BLE HIGH COURT OF KERALA

ANNEXURE A4 - PHOTOCOPY OF THE NOTIFICATION NO.GS3/2588/2010 DATED 13.8.2012 OF THE SECRETARY TO GOVERNOR/CHANCELLOR

ANNEXURE A5 - PHOTOCOPY OF THE PETITION FILED BY SRI.S.SUVARNA KUMAR, CHAIRMAN, SECULAR NATIONAL DRAVIDA PARTY(SNDP) REGISTERED UNDER THE CENTRAL ELECTION COMMISSION, NEW DELHI.

ANNEXURE A6 - PHOTOCOPY OF THE PRELIMINARY REPORT DATED 20.12.2012 OF THE APPLICANT TO THE CHANCELLOR

ANNEXURE A7 - PHOTOCOPY OF THE DO LETTER NO.131/PRL.SECY/CM/2012 DATED 29.10.2012 OF THE PRINCIPAL SECRETARY TO CHIEF MINISTER

ANNEXURE A8 - PHOTOCOPY OF THE GO(RT) NO.9271/2012/GAD DATED 8.11.2012 OF THE FIRST RESPONDENT

ANNEXURE A9 - PHOTOCOPY OF THE LETTER NO.KVASU/01/2012 DATED 19.11.2012 OF THE 3RD RESPONDENT.

ANNEXURE A10 - PHOTOCOPY OF THE REPRESENTATION DATED 30-.12.2012 OF THE APPLICANT

EXT.P2 : PHOTOCOPY OF THE REPLY STATMENT IN OA 539/13 FILED ON BEHALF OF R1 DT.9-9-2013.

ANNEXURE R1(A) - TRUE COPY PUBLISHED AN ARTICLE IN THE MALAYALA MANORAMA DAILY DATED 10.10.2011.

ANNEXURE R1(A-1)) - ENGLISH TRANSLATION OF ANNEXURE R1(A)

ANNEXURE R1(B) - TRUE COPY OF THE REPRESENTATION DATED
2.9.2011

ANNEXURE R1(C) - TRUE COPY OF THE GO (RT) NO.4297/2012/GAD
DATED 25.5.2012.

EXT.P3 : PHOTOCOPY OF THE REJOINDER STATEMENT OF THE
PETITIONER.

EXT.P4 : PHOTOCOPY OF THE ORDER DT.12-6-2013 IN OA 539/2013
OF R4.

EXT.P5 : PHOTOCOPY OF THE ORDER DT.19-6-2014 IN OA 539/2013
OF R4.

EXT.P6 : PHOTOCOPY OF THE SHOW-CAUSE NOTICE DT.27-4-2015
ALONGWITH THE REPORT OF ENQUIRY WITH COVERING LETTER
NO.86694/SPL.A1/2012/GAD DT.29-4-2015.

EXT.P7 : PHOTOCOPY OF THE REPRESENTATION DT.25-5-2015 OF
THE PETITIONER TO R1.

EXT.P8 : PHOTOCOPY OF THE ORDER DT.10-7-2015 IN OA 539/2013
OF CAT, ERNAKULAM BENCH.

EXT.P9 : PHOTOCOPY OF THE NOTE FOR THE CIRCULATION TO
GOVERNOR.

RESPONDENT(S) ' EXHIBITS

NIL

TRUE COPY

SKS

P.A. TO JUDGE

P.R.RAMACHANDRA MENON, J.

&

BABU MATHEW P.JOSEPH, J.

O.P(CAT) NO.120/2015

and

O.P(CAT) NO.121/2015

Dated this the 21st day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Could the charge-sheet stated as issued by the Government to the petitioner, who is an IAS Officer governed by the relevant Conduct Rules (presently holding the office of the Vice Chancellor of the Kerala Veterinary and Animal Sciences University) be interfered by this Court on the ground that the Government does not have any such power and that, such power if at all any, could only be exercised by the Chancellor of the University? Does it come

O.P(CAT) Nos.120/2015 & 121/2015

within the purview of the parameters specified by the Apex Court in the decision reported in **(2006) 12 SCC 28 (Union of India & Anr. vs. Kunisetty Satyanarayana)** holding that, ordinarily no Court shall interfere to quash/set aside show cause notices, charge-sheet etc, unless the said proceedings have been issued totally without any authority, or jurisdiction by the issuing authority? Further, should such scrutiny be widened, while exercising the power under Article 227 of the Constitution of India in respect of the orders passed by the CAT, declining interference, treating the O.P, as if it were an appeal? These are the main points to be considered in these original petitions.

2. The petitioner herein, who is an IAS Officer, was working in the Animal Husbandry Department of the Government, being a member of the Kerala Cadre. While so, he was sent on deputation to the Central Government in July, 2006 for a period of 5 years, but before he completing

the tenure, he was called back with permission of the Central Government and was considered for appointment as Vice Chancellor of the Kerala Veterinary and Animal Sciences University, which was set up by the first respondent/Government in the year 2010 under the Kerala Veterinary and Animal Sciences University Act, 2010. Among the three candidates considered for selection, the petitioner's name was recommended by the Government for appointment as the Vice Chancellor. Since it was a case involving appointment of the first Vice Chancellor of the University, the appointment was effected under sub-sec.(5) of Sec.12 of the Act, vide Annexure A1 notification dated 29.12.2010 issued by the Chancellor/Governor. The term of appointment was for a period of 5 years from the date of joining duty.

3. While so, the petitioner published some articles in a daily, deprecating the stand of the Government in converging the administrative authority and power upon a

few persons belonging to the IAS, by way of 'charge arrangement' and such other basis, in respect of various institutions and some other related aspects. On coming across the said article, the Government, as per proceedings dated 21.10.2011, advised the Governor/Chancellor to recall the petitioner from the post of Vice Chancellor and requested to hand over charge of the Vice Chancellor to the Agricultural Production Commissioner until a new Vice Chancellor was appointed. Accepting the said recommendation of the Government, the Chancellor, as per proceedings dated 21.10.2011, cancelled Annexure A1 notification and substituted him with the Additional Chief Secretary and Agricultural Production Commissioner to exercise the powers of the Vice Chancellor till a new Vice Chancellor was appointed.

4. This was to the chagrin of the petitioner, who sought to challenge the said proceedings by filing W.P(C) No.28284/2011, where interference was declined. Same was

the result, when a review petition was sought to be filed as R.P.No.938/2011. The matter came up before a Division Bench of this Court, on filing W.A No.347/2012. After hearing both the sides and after considering the scope of appointment to the post of Vice Chancellor by the Chancellor, the role of the Government in effecting the recommendation and such other relevant aspects, the Bench observed that the stand taken by the Government with reference to the '**doctrine of pleasure**' could not be permitted to be sustained. The Bench also observed that, after causing the petitioner to be recalled, he was accommodated only in a nonsensitive post and as such, the so called administrative exigency was not established by the Government. Though the factum of initiation of disciplinary action against the petitioner was brought to the notice of the Court with reference to the charge-sheet, no comment was made with regard to the legality, propriety or correctness of such action, however, holding that the respondents were at

liberty to proceed with the disciplinary action. But since recalling of the petitioner was held as not for any proven administrative exigency, the impugned proceedings were set aside and appropriate directions were issued as per Annexure A3 verdict dated 30.07.2012, to have the petitioner reposted as Vice Chancellor of the University. Pursuant to the said verdict, the petitioner was reposted as Vice Chancellor as per Annexure A4 notification dated 13.08.2012 issued by the Secretariat of the Governor/Chancellor.

5. Shortly thereafter, a copy of the complaint preferred by one Suvarnakumar, addressed to the Chancellor, was stated as obtained by the petitioner, referring to some deeds and misdeeds of the Vice Chancellor of the University who came to be appointed as a short gap arrangement, pursuant to recalling of the petitioner as mentioned above. On receipt of Annexure A5 complaint,

some inquiry was conducted by the petitioner on his own and submitted Annexure A6 report to the Chancellor, raising serious insinuations against the former Vice Chancellor-in-Charge (by name K.Jayakumar), also trying to fix much monetary liability upon him and recommending further necessary action. On receipt of the said report, a copy of the same was forwarded from the office of the Chancellor to the Government and after considering the facts and figures a D.O. Letter was issued vide Annexure A7. Disputing the veracity/credibility of the insinuation/recommendation of the petitioner, observing that the act of the petitioner amounted to a misconduct liable to be proceeded against in terms of the relevant Conduct Rules, Annexure A8 order was passed appointing the 3rd respondent to conduct a preliminary enquiry as to whether the petitioner had violated the discipline or Conduct Rules. In the course of further proceedings, Annexure A9 communication was issued by the enquiry officer to the

petitioner, seeking for his remarks, upon which it was replied by the petitioner as per Annexure A10, mainly pointing out that, he being the Vice Chancellor appointed by the Chancellor in terms of Sec.12 (5) of the Act, the Government did not have the power/authority to proceed against the petitioner on the alleged violation of the Conduct Rules. It was thereafter, that the petitioner chose to approach the CAT, Ernakulam by filing O.A.No. 539/2013.

6. Detailed reply statement was filed by the first respondent in the O.A also producing copies of the relevant documents. The petitioner filed a rejoinder as well. Although an interim order was passed by Ext.P4 dated 12.6.2013 to maintain 'status quo', it was subsequently vacated as per Ext.P5 order dated 19.6.2014. Annexure A11 charge-sheet was issued to the petitioner along with the statement of allegations.

7. In the meanwhile, the petitioner had written

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another article in the 'Kerala Kaumudi' daily dated 24.04.2013 with reference to the proposed visit of Mr Narendra Modi, the then Gujarat Chief Minister, at Shivagiri in Kollam district, criticizing the stand/policy of the Government. On coming across the same, it was prima facie found that there was violation of Rule 7 of the Conduct Rules and accordingly, another charge-sheet (No. 86694/Spl.A1/2012/GAD dated 16.5.2013) was issued to the petitioner. Raising almost similar grounds as in O.P (CAT) No.120/2015 the said charge-sheet was sought to be challenged by filing O.P.(CAT) No121/2015 where it has been produced as Annexure A8. In that case also, pleadings were completed and both the matters were considered together. After hearing both the sides, and considering the relevant provisions of law and the precedents cited across the bar, the Tribunal passed a common order dated 23.07.2013, holding that the version of the petitioner that his posting as Vice Chancellor of the University was never by

a deputation attracting Rule 6(2)(ii) of the IAS Cadre Rules, was not liable to be sustained. The Tribunal also held that there was no merit in the contention raised by the petitioner to the effect that the Government was not having any power to proceed against the petitioner for violation of the Conduct Rules, being a member of the IAS and still retain his lien under the Government. The version put forth by the petitioner that the order was issued by the particular person, who was holding the office of the Chief Secretary and not "by order of the Governor" (so as to make it an order of the Government), was held as not having any pith or substance. It was observed that the decision to initiate disciplinary proceedings against the petitioner was ordered by the Chief Minister, who was the 'cadre controlling authority' in respect of the posts in the IAS Cadre and that the Chief Secretary was only implementing or executing the order/decision as above. Reference was also made to the relevant file notings, pursuant to production of the file

(photo copy) before the Tribunal. It was accordingly, that both the O.As. filed by the petitioner were dismissed, which in turn, are challenged by filing separate original petitions.

8. In view of the close proximity to the issues involved and common grounds raised, both these matters were considered together. Sri.O.V.Radhakrishnan, the learned senior counsel appearing for the petitioner, took us through the niceties of the provisions governing the field, with reference to the contentions/grounds raised. Specific reference was made to Rule 6(2) (ii) of the Cadre Rules, contending that the said rule, dealing with deputation could be invoked only by the Central Government and not by the State Government, it being an appointment to an institution not owned or controlled by the State Government. It was also asserted that, by virtue of the mandate of Sec.9(9), read with Sec. 12 (5) and 12 (8) of the University Act, a person like the petitioner holding the post of Vice

Chancellor could have been removed only by the Chancellor and nobody else, that too after holding an enquiry by the Chancellor, effected through a sitting or retired High Court Judge or Supreme Court Judge as specified therein. There is no quintessential requirement of borrowing or lending in connection with the appointment of a Vice Chancellor in terms of the Act and as such, there is no instance on deputation. Once the Government recommends to the Governor to appoint the person concerned as the first Vice Chancellor under Sec.12 (5) of the Act, the Government becomes 'functus officio'. Making a reference to Secs.6 (xiv), 22(8), 23(2)(i),42,44(i), 45,46 (2),52(2), 72 and 73 of the University Act, the learned counsel submits that the Government is having all pervasive control over the University and by no stretch of reasoning, can it be said that the University is not controlled so as to fall within the ambit of Rule 6(2) (ii) of the IAS Cadre Rules. It is stated that appointment of the Vice Chancellor under section 12(5)

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of the Act cannot be construed as an appointment under Rule 6(2) (ii) of the IAS Cadre Rules and as such, the order passed by the Tribunal is liable to be set aside.

9. In support of the said contentions, various rulings are also cited from the part of the petitioner, including **(2007) 6 SCC 276 (Union of India & Anr. vs. Shardindu), AIR 1962 SC 195 (Dhaneshwar Narain Saxena vs. The Delhi Administration) and 1990(1) KLJ 681 (DB) (Gopalakrishnan vs. Chancellor, University of Kerala)** (as to the difference between the posts of Governor and Chancellor) besides **AIR 1982 P & H 439 (FB) (Hardwari Lal vs. G.D Tapase & Ors.) and (1997) (2) SCC 745 (Bhuri Nath & Ors. vs. State of Kerala & Ors.)**. The relevant provisions of the 'Rules of Business' (Rules 11, 12, 13, 14 etc) are also sought to be adverted to, besides citing some other rulings rendered by the Apex Court reported in **(2011) 8 SCC 670 (State of**

Uttaranchal & Anr. vs. Sunil Kumar Vaish & Ors.), (2011) 8 SCC 679 (Bakshi Dev Raj (2) & Anr. vs. Sudheer Kumar) and (2014) 10 SCC 673 (Gulf Goans Hotels Company Ltd. & Anr. vs. Union of India & Ors.).

10. Smt.Rekha Vasudevan, the learned Government Pleader appearing for the State, vehemently opposed the reliefs sought for. It is stated that, as per the Cadre Rules, the power has already been relegated by the Central Government to the State Government; particularly by virtue of clause 4.2 of the D.O.PT letter No.28020/4/91-AIS-II dated 26.7. 1993. By virtue of the said provision, it is made possible for the Cadre Officers of All India Services to be appointed in the University, by teaching/training institutions/departments which are autonomous organizations and which are not controlled by the Government, to be within the purview of Rule 6(2) (ii) of the Cadre Rules. The State Government themselves may

order such deputation except in the case of Central University being a University or institution established by the Government of India. It is pointed out that, as per the guidelines for such deputation, particularly clause 1(e), the autonomous bodies not controlled by the Government are defined as to include 'Universities' as well, with functional autonomy created under the statutory provisions. By virtue of clause (7), it is stipulated that the Cadre Controlling Authority would mean the concerned State Government, if the officer is in the State's cadre. Various other provisions are also referred to, defending the proceedings pursued by the Government.

11. The learned Government Pleader submits that Rule 2(ii) of the Cadre Rules is the only provision whereby deputation would be made possible and that the appointment of the petitioner, though under Rule 12(5) of the Act, was resulted only by virtue of being an IAS Officer, who was deputed by the Government after identifying the

candidate in the process of selection, retaining his lien in the State Cadre. With regard to the form in which an order has to be issued by the Government, and as to the mandate of Article 166 of the Constitution of India, it is stated that the stipulation is not of rigid compliance, as explained by a larger Bench of the Apex Court in **AIR 1952 SC 181 (Dattatraya Moreshwar vs. State of Bombay & Ors.)**. Reliance is also sought based on the verdict passed by the Apex Court in **Swadeshi Cotton Mills Company vs. State of U.P (AIR 1961 SC 1381)**. It is stated that, as per the All India (Discipline and Appeal) Rules, the order of suspension has to be in 'Form No.1' which is a standard form, that has to be shown as signed with name and designation, which requirements have been satisfied while issuing the charge-sheet. It is also pointed out that the charge-sheet by itself is not a 'final order' to be specifically mentioned as "By Order of the Governor". Even otherwise, the mandate of the provision has been held as 'directory'

and 'not mandatory' by the Apex Court (larger Bench) and the defect if at all any in this regard by itself cannot vitiate the proceedings in toto. It is a curable one.

12. With reference to the relevant proceedings, to ascertain whether the decision was taken by the competent authority and was communicated by the executive, the learned Government Pleader submits that the decision was taken by the 'Chief Minister', who is the Cadre Controlling Authority in respect of IAS Officers. The Chief Minister has subscribed his signature to the proceedings, and it was made available to the Governor/Chancellor as well. Photocopies of the file containing the signature of the Chief Minister and the Governor were also made available before the Tribunal (placed for consideration before this Court as well). It was after considering the same, that the issue was finalised, declining interference by the Tribunal. Asserting the competency on the part of the Government and the

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Chief Secretary who communicated the same, reliance is sought to be placed on some other decisions as well, including **1961-I-LLJ-260 Ker (DB) (Mayuranathan vs. State of Kerala & Anr.)** and **(1997) 8 SCC 372 (State of Punjab & Ors. vs. Inder Singh & Ors.)** to have a proper understanding as to the scope of deputation. Making a reference to paragraphs 26 and 27 of the verdict passed by the Apex Court in **(2007) 6 SCC 276 (Union of India & Anr. vs. Shardinu)**, it is further pointed out that there is a clear distinction between the All India Services and other services, in relation to the question of deputation as made clear by the Apex Court.

13. Coming to the nature of appointment of Vice Chancellor under the Act, the power is vested with the Chancellor to effect appointment and also to remove the person concerned. Sec.9(9) of the Act stipulates that the Chancellor shall have power to remove the Vice

Chancellor from the office, by an order in writing, on charges of misappropriation/misconduct/mismanagement of funds or any other good and sufficient reasons; provided that, before taking action under this sub-section, such charges shall be proved by an inquiry conducted by a person who is or has been a Judge of High Court or Supreme Court appointed by the Chancellor for the purpose and further that the Vice Chancellor shall not be removed under the said Section unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. Appointment is to be effected under Sub-sec. (2) of Sec.12 of the Act, by the Chancellor, from among the panel of names recommended by the Search Committee consisting of the members specified therein. Such appointment has to be effected by the Chancellor with the concurrence of the Government as specified in Sub-sec.(4) of Sec.12. Sub-sec.(5) is an exception to the effect that notwithstanding anything contained in Sub-sec.(4), the

'first' Vice Chancellor shall be appointed by the Chancellor on the recommendation of the Government. Coming to Sub-sec.(8) of Sec.12, the course available to the Chancellor, to remove the Vice Chancellor for the specified instances and the manner in which such removal has to be made are specified therein(almost similar to those u/s.9(9)). By virtue of the mandate of the statute, it is contended that, nobody else except the Chancellor, is having power to initiate disciplinary proceedings against the petitioner who is the Vice Chancellor.

14. At the very outset, it is to be noted that the power of removal is corollary to the power of appointment . Secs.9(9) and 12(8) of the Act only say that removal of the Vice Chancellor can be ordered only by the Chancellor and that an inquiry has to be conducted by the Chancellor to prove the charges by appointing a person who has been a Judge of High Court or Supreme Court, after affording opportunity of hearing. The provision does not indicate

that, if any enquiry is to be ordered in respect of any shortcomings of the Vice Chancellor and even if it may not involve the question of removal, the inquiry in all cases has to be conducted through a person who is or has been a Judge of the High Court or Supreme Court. This Court finds it difficult to accept the proposition mooted by the learned senior counsel in this regard. There is no dispute to the fact that the petitioner being a member of IAS, allotted to the Kerala Cadre is to be governed by provisions of the relevant Conduct Rules. There is also no dispute, that the authority to initiate disciplinary proceedings against him, had he been continuing in the same office before being appointed as Vice Chancellor, is the Cadre Controlling Authority; who is none other than the Chief Minister. Merely for the reason that the petitioner has been appointed as Vice Chancellor, could it be said that the Cadre Controlling Authority has lost the power to take appropriate action, if at all any misconduct is committed by the officer, is the point to be

considered.

15. It is true that, in the course of such inquiry, if it warrants removal, it can be done only by the Chancellor, as specifically dealt with under the Act. It is to be noted that no other disciplinary power is specified in respect of the Vice Chancellor under the Act, otherwise than the question of removal as mentioned u/ss.9(9) and 12(8). The Vice Chancellor need not be a person from the IAS Cadre, by virtue of the scheme of the statute. If he is a person from some other source, removal of the Vice Chancellor from the office, by the Chancellor, with reference to the powers u/ss.9(9) and 12(8) of the Act after conducting an inquiry in the manner as specified therein, may serve as an adequate punishment in respect of the misconduct. But the position may not be the same, when it comes to the case of a Vice Chancellor who belongs to an All India Cadre, as removal from the office will only set the clock back to the same position, by putting him back to the State Government

Cadre. If any violation have been committed by the Officer of the Cadre under the Conduct Rules, it has necessarily been looked into and appropriate remedial action has to be taken. If the misconduct is proved, befitting punishment has to be imposed, commensurate with the gravity of the proven mis-conduct. This comes within the prerogative of the State Government/Cadre Controlling Authority. The misconduct need not be one which is done in the course of discharging official duty while holding the cadre post. It is settled law that if any act or course is pursued by an employee which is quite unbecoming of him whether within the premises or outside the premises of the establishment, it is liable to be proceeded against. In the case of the petitioner herein, Rule 7(b) of the All India Services (Discipline and Appeal) Rules, 1969 enables the State Government to take such action in respect of such misconduct. For convenience of reference, Rule 7 of the said Rules is extracted, which reads as follows:

"7(1) Where a member of the service has committed any act or omission which renders him liable to any penalty specified in Rule 6--

(a) Omitted since it is not relevant

(b) If such act or omission was committed after his appointment to the service,--

(i) While he was serving in connection with the affairs of a State, or is deputed for service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of that State;

(ii) omitted

(iii) omitted

(iv) omitted

(v) omitted

(vi) While he was absent from duty otherwise than on leave, the Government which would have been competent to institute disciplinary proceedings against him, had such act or omission been committed immediately before such absence from duty;

(vii) The Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to provisions of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company associations, body of individuals, or local authority, as the case may be under whom he is service at the time of institution of such proceedings shall be bound to render all reasonable "facilities to the Government instituting and conducting such proceedings".

16. There is a contention for the petitioner that the University in the instant case is an authority controlled by the State Government and as such, the various instances mentioned from sub-clauses (i) to (vi) of Rule 7(1) (b) are not attracted to the case in hand. In any other case, it is contended, it is for the Central Government to take such action as specified in clause (vii). The said proposition does not appear to be attractive. If the version of the petitioner

that the University is an institution 'controlled by the State Government' is accepted, then it squarely comes within the purview of Rule 7(1) (b), which clearly says that in such cases, the competent authority shall be the Government of that State. Clause (vi) of Rule 7(1) (b) takes care of the situation in the case of persons who are absent from duty otherwise than on leave (which is applicable to the instant case). The petitioner, admittedly, was sent to the University pursuant to Annexure A1 appointment made by the Chancellor based on the recommendation made by the Government and as such, the competent authority to institute disciplinary proceedings against him is nobody other than the State Government, by virtue of deeming fiction to the effect that, it could be pursued had such act or omission committed immediately before such absence from duty. The petitioner was proceeded against earlier, in connection with the publication of article in a 'Daily' deprecating the affairs and policy of the Government. This

led to issuance of a charge-sheet dated 18.11.2011 to him, which was produced before the Division Bench of this Court earlier, as Annexure A1 in connection with the proceedings of W.A. No.347/2012, wherein Annexure A3 judgment was passed. Issuance of such articles of charge has been referred to in paragraphs 3 & 10 of the judgment and the Bench clearly observed in para10 of the said verdict that respondent State was free to proceed with the disciplinary proceedings initiated. It was also observed in paragraph 11, that the petitioner being a member of the IAS, could always be recalled by the Government for administrative reasons and more so, when his appointment as the 'first Vice Chancellor' was on the recommendation of the Government u/s.12(5) of the Act (though such recalling effected by the Government was intercepted for want of sufficient materials to show administrative exigency).

17. The observation made by the learned Judges in

paragraph 10 as aforesaid, to the extent it is relevant, is extracted below:

"10. We are constrained to accept the argument of the learned counsel for the appellant that the revocation of the appellant's appointment prematurely as the Vice Chancellor is not for any administrative reasons as claimed by the State. The documents produced as Annexures I & II clearly show that soon after the impugned orders recalling the appellant from the post of Vice Chancellor, the Government levelled charges against him for initiating disciplinary action which is only based on Ext.P6 article written by him in the news paper sarcastically commending upon Senior IAS Officers holding several posts on charge basis. Further, the Indian Express news paper published on 7.11.2011, produced as Ext.P13, clearly shows that the Chief Secretary has explained the recall of the appellant from the post of Vice Chancellor as attributable to Ext.P6 publication made by him in the news paper. So much so, "the administrative reasons" stated by the Government as reason for recalling the

appellant from the post of Vice Chancellor of the University is only a camouflage and make believe and not the real reason which is obviously Ext.P6 publication. Our conclusion is reinforced by the inability of the Government to explain as to what is the administrative reason or exigency in service recalling the Head of the University, which is an important post particularly when the University was being set up under the leadership of the appellant, whose work is appreciated by the Chancellor in no unequivocal terms stated in the confidential report. The respondents also have not explained as to which sensitive post needed to be filled up so urgently by the appellant by recalling him from the post like Head of a newly set up University, particularly when the appellant was selected by virtue of his qualification and experience in the same field of operation of the University. We, therefore, hold that the facts and circumstances clearly establish that the act of recalling the appellant from the post of Vice Chancellor of the University is not for any bonafide administrative reason but is tainted by prejudice and is certainly a stigma, if not a virtual

punishment. We do not wish to comment upon the legality or propriety or correctness of the disciplinary proceedings initiated against the appellant vide Annexure 1 subsequent to his withdrawal from the post of Vice Chancellor of the University. The respondents are free to proceed with disciplinary proceedings initiated. However, in our view, a democratic Government should not be over sensitive to criticism and react in a manner detrimental to public interest by removing the head of an institution that too in it's infancy only to be under managed by someone on additional charge. We are afraid whether the Government is challenging and trying to disprove appellant's theory covered by Ext.P6 publication by substituting full time Vice Chancellor of the Veterinary University and by replacing him by Additional Chief Secretary on additional charge basis".

18. There is no challenge against the said finding, from the part of the petitioner and going by the provisions cited across the bar and the decisions referred to, this Court

does not find any tenable ground to deviate from the said observation/finding. No reason or material, even to suggest that the petitioner's case disputing the authority of the Government could be sustained in any manner, is brought to the notice of this Court.

19. Coming to the question of deputation, the case of the petitioner is that Rule 6 (2) (ii) of the Cadre Rules, dealing with deputation, is not at all attracted to the case, it being an appointment under Sec.12 (5) of the Act. Deputation under Rule 6(2) (ii) can only be effected by the Central Government and not by the State Government, according to the petitioner. Once the petitioner comes to the stream of the University under the Act, as appointed by the Chancellor, it is nobody other than Chancellor who is having control over him. It is also pointed out that the guidelines stated as issued by the Ministry, Department of Personnel and Training, sought to be relied on by the respondents to

assert that the petitioner was on deputation, is not at all correct or sustainable in view of the clear mandate under the Rules and further that any guidelines or circular issued in this regard cannot alter, vary or modify the Rule .

20. In order to appreciate the above contentions in the proper perspective, a reference to the guidelines as per the prescription under the Rule, is to be made. The relevant guidelines issued by the Ministry, DOPT, in this regard, vide paragraphs 4.1 and 4.2, as dealt with in Government of India DOPT Letter No. 28020/4/91-AIS-II dated 26.7.1993 are extracted below:

4.1 Rule 6(2) (ii) of the IAS (Cadre) Rules and the corresponding rules governing the IPS and IFS enable the deputation of a member of the service to an international organisation, an autonomous body not controlled by Government or a private body, etc. In such cases, the Central Government is the authority competent to order such deputation and the consent of the State

Government and the officer concerned is also required.

4.2 It is seen that in several instances officers of the All India Services are required to be sent on deputation to the Universities/teaching or training institutions of repute which are autonomous organisations and which are not controlled by the Government, and therefore, such deputations fall within the purview of Rule 6 (2) (ii). It has now been decided that in all such cases, the State Government may themselves order the deputations in institutions located within the State, for a period of up to three years, provided that prior consent of the officer is obtained and the Central Government is kept informed of all such deputations. This provision will not apply to deputations to Central Universities/Deemed Universities or institutions established by the Government of India.

21. Clause/Para 5.1 of the guidelines for deputation of members to the All India Service under Rule 6(2) (ii) of the

respective Cadre Rules specifies that deputation may be allowed in the specified categories or organizations. Sub-clause (e) is in respect of autonomous bodies not controlled by Government which are as defined therein, is extracted below:

Sub-clause (e) - Autonomous bodies not controlled by Government which are defined as follows:

(a) The following criteria may be taken into account - any of the three may be the basis:

*(i) **Structure of the Organization** - Organizations covered by the Rule 6(2) (ii) may include Constitutional bodies, Statutory organizations, Commissions, Regulatory Authorities and organization like Universities with functional autonomy created under Constitutional and Statutory provisions. These organizations may opt for the Central Staffing Scheme or not opt for the same.*

*(ii) **Financial autonomy** - Organizations with less than 50% share of Government funding or organisations where Government is not a*

majority shareholder.

(iii) Power to give directions

Organizations over which the Government has no power to give directions. The nature of byelaws and the power to guide would be important, for example, in the case of the Food Corporation of India (FCI), Organisations where Government officials hold ex officio positions cannot be considered as autonomous.

22. Clause/Paragraph 15 of the Guidelines says that the officer of service may be allowed deputation for an initial period of 5 years under Rule 6 (2) (ii) and a maximum of 7 years of deputation can be allowed in the first 30 years of service. It is clearly stipulated in clause /paragraph 16 that, it shall not be extended further under any circumstances. Clause/Paragraph 19 is very relevant as to the nature of such posting, which reads as given below:

Clause/Paragraph 19 - *While on deputation, the service conditions of the officer shall continue to*

be regulated under the relevant All India Service Rules. Other terms and conditions may be in accordance with standard terms devised from time to time.

23. From the above, it is clear that the scope of deputation, as dealt with under Rule 6(2) (ii) of the Cadre Rules prescribed by the Government, was considered and the scope was explained with the object to be served so as to have clarity, transparency and consistency in giving effect to the Rule.

24. Now, coming to the question whether there is any deviation or attempt to overreach Rule 6(2) (ii) of the Rules, by the Government by issuing the Guidelines as mentioned above, it is necessary to have a proper appreciation of Rule 6 itself. The said Rule reads as follows:

Rule 6 - *Deputation of cadre officers* - 6(1) *A cadre officer may, with the concurrence of the*

State Governments concerned and the Central Government , be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government.

Rule 6(2) - A cadre officer may also be deputed for service under-

(i) a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, a Municipal Corporation or a Local Body, by the State Government on whose cadre he is borne; and

(ii) an international organization, an autonomous body not controlled by the Government, or a private body, by the Central

Government in consultation with the State Government on whose cadre he is borne;

Provided that no cadre officer shall be deputed to any organization or body of the type referred to in item (ii), except with his consent:

Provided further that no cadre officer shall be deputed under sub rule (1) or sub-rule (2) to a post other than a post under the Central Government or under a company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government, carrying a prescribed pay which is less than, or a pay scale, the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation.

25. On a proper reading of the above Rule, it is very clear that sub-rule (1) of Rule 6 deals with deputation of the Cadre Officer purely to the Central Government or another State Government or the specified bodies wholly or substantially owned or controlled by the Central

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Government or by another State Government. In other words, it does not deal with deputation of a Cadre Officer within the State concerned or to any other similar organization /establishment within the State, so as to come within the purview of sub-rule (2) of Rule 6. Sub-clause (i) of Rule 6(2) deals with the power of the State to depute a Cadre Officer to the bodies mentioned therein, which are wholly or substantially owned or controlled by the State Government or a Municipal Corporation or a local body. The meaning of the terms mentioned in Rule 6 (2)(i) have to be liberally construed to mean that, in so far as the institution is wholly or substantially owned or controlled by the State Government, such deputation is possible by the State Government. If it be so, in so far as there is a contention of the petitioner that the Kerala Veterinary and Animal Sciences University is controlled by the State Government and that the State Government is vested with power as per Secs.6(xiv) 22 (8), 23(2)(i), 42, 44(2), 45, 46 (2), 52(2) ,

72 and 73 of Act, 2010, the petitioner cannot be heard to say that it will not come within the purview of Rule 6 (2) (i) enabling the State Government to order deputation.

26. Coming to clause(ii) of Rule 6(2), it envisages an international organization, an autonomous body not controlled by the Government or a private body; where the power is vested with the Central Government; subject to the rider that it has to be exercised in consultation with the State Government on whose cadre the officer is borne. To put it more clear, it is only in respect of Rule 6(2) (ii) that the 'consent' of the concerned officer is required to be obtained, as stipulated in the 'first proviso' thereunder, by virtue of the nature of the institution, where the State Government is having no control, being an international organization or an autonomous body or a private body as mentioned therein. In the case of deputation under Rule 6 (1) or to the establishments mentioned in Rule 6(2) (i), no such consent of the officer is stipulated to be obtained, by

virtue of the obviously distinguishable nature of such institution, having no private interest. It is in the said circumstances, that autonomous body mentioned in Rule 6 (2) (ii) was sought to be explained by the Ministry, by issuing necessary clarifications/guidelines, clearly pointing out that University stands included under the clause 6(2)(ii) and deputation is possible to such institution to the extent as specified, which in no way does stand contrary to the mandate of Rule 6 (2) (ii). The contention raised by the petitioner to the contrary is only to be repelled and this Court does so.

27. It is true that the Vice Chancellor of the University could be identified and appointed by the Chancellor in the manner specified in statute and he need not be a serving person of the Government. By virtue of the admitted case of the petitioner that he is an IAS Officer in the cadre of the State and was selected and recommended by the State, to

be appointed as Vice Chancellor for specific period of 5 years, there cannot be any doubt or dispute that, after 5 years the petitioner has to come back to the parent cadre and has to be accommodated by the State without adversely affecting the conditions of his service. In other words, the placement given to the petitioner as Vice Chancellor was a stopgap arrangement under Sec.12(5) of the Act, retaining his lien in the parent Cadre and such an exercise could be done only by 'deputation' and not otherwise.

28. With reference to the explanation given by the Apex Court it is stated that the element of borrowal and lending is involved therein. The contention of the petitioner is that, no 'borrowal' was made by the University and that no 'lending' was there; does not have any merit at all. The University is created by virtue of an Act of Legislature as per Act No.3 of 2011. So as to discharge all functions of the

Vice Chancellor and to give effect to the provisions u/s.12 (5), a person had to be identified for appointment by the Chancellor. The Government being creator of the University, and also being the authority to identify the person concerned, identified the petitioner, an IAS Officer in the Cadre of the State, as the competent person. As it stands so, there is an instance of deemed borrowal and lending, which satisfies the requirement of deputation. The contention raised to the contrary is flimsy and puerile. It is ordered accordingly.

29. When the petitioner contends that the recommendation by the Government and consequential appointment by the Chancellor u/s.12 (5) of the Act cannot be deemed as an instance of deputation and further that the power to depute an officer is exclusively vested with the Central Government, then it may have to be presumed that the appointment of the petitioner as the Vice Chancellor of

the University for a period of 5 years cannot give him any right to come back to the State cadre and he can aspire nothing other than 5 years of tenure as the Vice Chancellor. Similarly, if the State did not have any power to send the petitioner for serving the University on temporary/ stopgap arrangement, giving effect u/s.12(5) of the Act, and if the version of the petitioner that such power is vested only with the Central Government is to be accepted, then the very basis for setting the field for having been appointed by the Chancellor gets vanished, and it cuts the root of the existence or continuance of the petitioner in the post of the Vice Chancellor; which cannot be so.

30. Coming to reliance sought to be placed by the petitioner on the decision passed by the Apex Court in **(2007) 6 SCC 276 (Union of India & Anr. vs. Shardindu)** as to the scope of deputation, it is to be noted that the factual position considered by the Apex Court is

entirely different. It was never dealing with the case of an IAS Officer who was a member of the All India Service left in the cadre of any particular State. It was a case involving appointment of the Chairperson to the NCTE (National Council for Technical Education) . The order of deputation was subsequently set aside by the Union of India. It was contended by the Union of India that, since the appointment was purely on deputation basis and for a specified term, the appointing authority had every right to terminate the deputation and to send the officer back to the parent department of the State of U.P. Referring to the particular facts and circumstances, the Apex Court observed that the appointment there could not be said purely on deputation basis, though loosely it could be said as on deputation, since the incumbent should have his lien in the State of UP and the State of UP having permitted him to join the post for a fixed period or till he attained the age of superannuation at 60 years. This is not at all applicable in the case of the

petitioner herein, for the reason that the Apex Court had made it clear in the very same judgment, that the position may differ in the case of an All India Service person. The observation made by the Apex Court in para 23 is extracted below:

"since the respondent holds a lien in the State of UP therefore, to some extent he can be said to be on deputation but it is not in the sense of deputation as in the case of an All India Service person who is sent on deputation to the Central Government or to other organisation".

31. These aspects have been widely considered by the CAT while passing verdict under challenge; also observing that the petitioner had sought to approach the CAT only by virtue of the fact of being a member of service governed by All India Service Acts and Rules; but for which he was to move the matter before such other Forum/Court. There cannot be any dispute that the petitioner, throughout his

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career, would stand governed by All India Service Conduct Rules and the petitioner cannot approbate and reprobate simultaneously.

32. There is a serious contention for the petitioner that the proceedings initiated and being pursued against him by issuing the charge-sheet (Annexure A8 in O.P (CAT) No. 121/2015 and Annexure A11 in O.P(CAT) No.120/2015) are per se illegal in so far as they have been issued by the concerned person who was holding the office of the 'Chief Secretary' and that is not an order issued by the 'Government', with reference to the mandate under Article 166 of the Constitution of India.

33. It is true that Article 166 (1) stipulates that every order to be passed by the Government has to be 'in the name of the Governor'. Article 166 (2) specifies that the same shall be expressed to be taken in the name of the

Governor. Article 166 (2) provides that the orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in the rules to be made by the Governor. Article 166 (3) says that the Governor shall make rules for convenient transaction of business by the Government of the State, and for allocation among the Ministers of the said business. In exercise of the powers conferred upon the Governor under clause (3) of Article 166, the Governor has made certain rules which are known as 'Rules of business of the Government of Kerala'. It is stipulated by Rule 11 of the said Rules that all orders or instruments made or executed by or on behalf of the Government of the State shall be expressed to be made or executed 'in the name of the Governor'. Rule 12 says that every order or instrument of the Governor of the State shall be signed by a Secretary or an Assistant Secretary or by such other officer as may be specially empowered in that behalf and such signature shall

be deemed to be the proper authentication of such order or instrument. It is evident from the Rules of Business that the orders and decisions are to be made/taken by the concerned Minister in charge of the department and this decision/order is to be authenticated by the Secretary of the concerned department or by some other officer empowered in this behalf. If the said requirement is satisfied, then it becomes an order of the Government and it is not liable to be called in question in any proceedings. In other words, even though 'Governor' is the executive head of the State, it is not at all necessary that every Government Order should proceed from the Governor personally. By virtue of Rules of Business formulated in exercise of the power under Article 166(3) of the Constitution of India, the Governor has authorized the Ministers in charge of the department who decide and act on behalf of the Governor and if such orders/decisions are authenticated by the Secretary in the manner as specified, it could be deemed as an order of the

Government.

34. The scope of Article 166 of Constitution of India and orders passed thereunder came up for elaborate consideration before a Constitution Bench of the Supreme Court in **Dattatraya Moreshwar vs. State of Bombay & Ors. (AIR 1952 SC 181)**. It was a case in relation to the Preventive Detention Act, 1915 . Whether strict compliance in 'form' was necessary, was a point mooted for consideration . The Court considered the question whether the order would be invalid, for the reason that it was not expressed in the manner laid down in Article 166. The Apex Court observed that, the relevant clause does not undoubtedly lay down how an executive action of the Government of a State is to be performed and that, it only prescribes the mode in which such act is to be expressed. The Bench further observed that the manner of expression is ordinarily a matter of form, but whether rigid compliance

with the form is essential to have validity of an act or not depends upon the intention of the legislature. The crux of the decision rendered by the Court (including by way of supplementary portions authored by the concerned learned Judges of the Bench) is that, the provision is only directory and not mandatory. Same was the declaration of law, in the subsequent judgment by the High Court of Kerala reported in **P.Joseph John vs. State of Travancore- Kochi (1966-I-LLJ-235)**. The position was further considered by another Division Bench of this Court as well, in the decision in **Mayuranathan vs. State of Kerala & Anr. (1961-I-LLJ-260)** .

35. A larger Bench of the Apex Court in **Swadeshi Cotton Mills Company vs. State of U.P. (AIR 1961 SC 1381)** held that form of the order is not the one to govern the basis and to assess its validity . The observations in the said verdict, to the extent they are relevant, are extracted

below:

"Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, (be it executive or of the character of subordinate legislation), it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to

satisfy the court by other means that the conditions precedent were complied with".

36. Coming back to the case in hand, it is true that the charge-sheet is signed by the 'Chief Secretary' of the State. It is also seen that such proceedings stated/expressed as issued by order of the Governor. Now the question comes, whether it has been initiated and issued by the Chief Secretary himself or as ordered by the competent authority/Government.

37. The learned Government Pleader produced photocopies of relevant files/proceedings containing "**notes**" and "**endorsements**" for perusal of the Court which were produced before the Tribunal as well. There is no dispute as to the authenticity of the "notes" which were perused by the Tribunal. On going through the 'file notes', it seems that on coming across the alleged delinquency/misconduct, necessary notes were put up by the then Chief Secretary

(by name Mr. K.Jose Cyriac) on '15.4.2013', for approval of the Chief Minister, who is dealing with the portfolio of 'General Administration' and is the Cadre Controlling Authority. It was also brought to the notice of the Chief Minister that the delinquent officer was functioning as the Vice Chancellor of the concerned University and hence the Chief Minister might consider keeping the Governor also informed by circulating the file to the Governor. After going through the file, the proceedings were approved by the Chief Minister on '16.4.2013' subscribing his signature to the proceedings. It is seen that the file was forwarded to the Governor and the Governor, after perusal, put the signature on '4.5.2013'. It was thereafter, that Annexure A11 charge-sheet was issued on '13.5.2013' by the subsequent Chief Secretary who replaced the former Chief Secretary. Almost similar course was pursued in respect of the cause of action in O.P.(CAT) 121/2015 as well. The necessity to proceed against the petitioner was considered as essential, in the

meeting of the Council of Ministers held on 25.2.2013 and the file was put up before the Chief Minister on 22.5.2013 itself. After considering the same, the 'notes' were approved and the Chief Secretary was authorised to proceed with further steps in accordance with law by passing appropriate orders on '22.5.2013'. It was accordingly, that Annexure A8 charge memo dated 15.6.2013 was issued to the petitioner in respect of second instance of misconduct. The necessity to inform the course and proceedings to the Hon'ble Governor, who is the Chancellor of the University, by virtue of the petitioner's holding the office of the Vice Chancellor, as suggested by the Chief Secretary was considered by the Chief Minister and approved the same subscribing his signature with seal on '19.8.2014'. The file was forwarded to the office of the Governor and after perusing the same, the Hon'ble Governor subscribed his signature to the file on '22.8.2014', and a further endorsement was made by the Hon'ble Chief Minister, when

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the file came back to him on that day itself . Both the files as mentioned above, contain the signature of the Hon'ble Chief Minister, with seal on 19.8.2014, 20.08.2014, 17.12.2014 and 21.4.2015 (different dates in the two different files). The file notes and signature of the Hon'ble Chief Minister and also that of the Hon'ble Governor reveal that the proceedings have been initiated for issuing charge-sheet, not by the Chief Secretary on his own; but on the basis of the direction of the competent authority, i.e, the Chief Minister, who is the Cadre Controlling Authority. This being the position, there is absolutely no violation of the requirements under Article 166 of the Constitution of India and the challenge raised in this regard, cannot but fail.

38. In the above facts and circumstances, this Court is of the view that there is no much pith or substance in the case moulded by the petitioner . The proceedings filed before the CAT and the present petitions filed before this

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Court are premature. This Court does not find any irregularity; much less any illegality in the verdict passed by the Tribunal. The Original Petitions fail and both the cases are dismissed accordingly.

P.R.RAMACHANDRA MENON, JUDGE

BABU MATHEW P.JOSEPH, JUDGE

sks/-