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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision: 5<sup>th</sup> July, 2023*

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W.P.(C) 2230/2021

DR. M.P. CHAUDHARY

..... Petitioner

Through: Mr. Tushar Singh and  
Ms. Sugandh Virmani, Advocates.

versus

NETAJI SUBHAS UNIVERSITY OF TECHNOLOGY AND  
ANR. .... RespondentsThrough: Mrs. Avnish Ahlawat, Standing  
Counsel with Ms. Tania Ahlawat,  
Mr. Nitesh Kumar Singh, Ms. Palak  
Rohmetra, Ms. Laavanya Kaushik and  
Ms. Aliza Alam, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. By this writ petition, Petitioner assails termination notice dated 31.12.2020 issued by Netaji Subhas University of Technology/ Respondent No.1 (hereinafter referred to as 'University') and also seeks a writ of mandamus directing the University to treat Petitioner's services as Visiting Professor, Department of Mathematics as deemed to be continued from 31.12.2020.

2. Factual matrix, shorn of unnecessary details and as captured in the writ petition, is that Petitioner is a reputed and renowned mathematician with vast and enriching experience as a Scholar and is



a recipient of esteem accolades viz. scholarship of Clay Mathematics Institute (USA), 2008, Young Scientist Talent Award, 2002 and more than 275 publications to his credit. Petitioner has also served as Associate Professor (Mathematics) at the prestigious International Institution Madda Walabu University apart from other academic achievements.

3. University is established by a Statute and works directly under Respondent No.2/Directorate of Training and Technical Education, Government of NCT of Delhi.

4. Petitioner was recommended by a duly constituted Selection Committee in its meeting held on 30.07.2019 for appointment as Visiting Professor (Visiting Faculty), Mathematics in accordance with The Delhi Netaji Subhas University of Technology Act, 2017 (hereinafter referred to as 'Act 2017') and Netaji Subhas University of Technology, Delhi (First) Statutes, 2018 (hereinafter referred to as 'First Statutes').

5. Pursuant to the recommendations of the Selection Committee, Petitioner was appointed vide letter dated 02.08.2019 initially for a period of one year with a condition that his services could be dispensed with in case of appointment of a regular faculty. It is stated that upon concerns raised by the Petitioner, this condition was deleted and a fresh letter dated 16.08.2019 was issued. Vide order dated 30.08.2019, pay of the Petitioner was sanctioned as Rs.1,17,856/- per month w.e.f. 06.08.2019 as a Visiting Professor. Upon satisfaction of the services rendered, the period was extended by another one year from 06.08.2020 till 05.08.2021.



6. Petitioner avers that suddenly without any prior notice or warning and for no plausible reason, a termination notice dated 31.12.2020 was served on the Petitioner purportedly issued by the Competent Authority. The notice was cryptic and non-speaking and Petitioner was unable to understand the reason for the sudden proposed termination and to prevent the Petitioner from taking legal recourse, the termination was sought to be effected with 'immediate effect'. Aggrieved with the notice, Petitioner gave a written representation dated 15.01.2020 to the Vice-Chancellor of the University but there was no response whereafter Petitioner filed the present writ petition.

7. On 18.02.2021, when the writ petition was first listed, Court was informed by the counsel for the Petitioner that by communication dated 31.12.2020 Petitioner was called for a personal hearing and the matter was adjourned. On 09.03.2021, Court was apprised that after giving a personal hearing to the Petitioner, an order had been passed by the University on 05.03.2021 containing justification for the termination. The order has been placed on record.

8. Assailing the impugned order dated 05.03.2021 and the earlier termination notice dated 31.12.2020, learned counsel for the Petitioner contended that the impugned termination is bad in law as the notice was issued and the order was passed without following the mandatory and due process envisaged in the First Statutes, in terms of which services of the Petitioner could not have been terminated without a reasonable opportunity to show cause. Attention of the Court was drawn to Statute 24(4) of the First Statutes which provides that no teacher, member of the academic staff or other employee shall be



removed under Clauses (2) or (3) thereof unless he has been given a reasonable opportunity of showing cause against the proposed action.

9. It was further contended that despite being a Visiting Professor, the said provision will apply to the Petitioner as he is covered under the definitions of both 'employee' and 'staff'. Section 2(k) of Act 2017 defines 'employee' as any person appointed by the University and Section 2(w) defines 'staff' as all teaching and non-teaching staff of the University and by a plain reading of the Sections, Petitioner is both an employee and staff and therefore his services could only have been terminated after issuance of a show-cause notice, which the University failed to issue prior to the termination notice/order.

10. It was further contended that appointment of Visiting Faculty is governed by the appointment letter, which in turn relies on guidelines issued vide Notifications dated 20.07.2016 and 07.11.2019 and since neither of them contain the procedure for termination of service, University will have to fall back on the Parent Act and Statutes to follow the procedure in case it decides to initiate an action for termination. Even assuming that the procedure prescribed in Statute 24(4) is not applicable to the Petitioner being a Visiting Faculty, University cannot violate principles of natural justice, which require an opportunity of hearing to be given before an extreme action of termination of service is taken. Principle of *audi alteram partem* is an essential feature of Article 14 of the Constitution and the impugned action violates Constitutional protections and safeguards.

11. It was also argued that it is a settled proposition of law that where law prescribes a manner in which a thing has to be done, that



thing must be done in that manner or not done at all and this is an age-old aphorism, deeply engrained in legal lore. [Ref. *Chairman, Arya Girls Senior Secondary School v. Director and Others*, 2022 SCC OnLine Del 253]. Reliance was also placed on judgments in *Hamdard Public School v. Directorate of Education and Anr.*, (2013) 202 DLT 111 and *Army Public School v. Narendra Singh Nain*, 2013 SCC OnLine Del 3351, wherein it was held that when an employee has statutory protection, his services cannot be terminated except by following due process of law. It was further held that in service jurisprudence, no employee can be terminated on allegations of misconduct, without giving him/her, an opportunity of hearing to prove his/her innocence.

12. It was vehemently submitted that the case of the Petitioner is squarely covered by the judgment of Punjab and Haryana High Court in *Satyapal Yadav v. State of Haryana & Ors.*, C.W.P. 18685/2020 decided on 11.02.2021, where the Court set aside the termination of a Guest Faculty on the ground that no opportunity of hearing was given prior to issuance of the termination order.

13. The last plank of the arguments on behalf of the Petitioner was that no doubt, after the writ petition was filed, the University called the Petitioner for a personal hearing to cover up its illegal actions, however, the hearing was only a farce. At the hearing, Petitioner was not provided with any details/specifics of the alleged complaints/allegations against him nor was he furnished the reasons for termination and Petitioner was incapacitated from responding and effectively defending the allegations. No document was served on the Petitioner and no enclosure was attached with the letter dated



05.03.2021. After a brief session, the hearing ended in violation of all principles of natural justice and the Petitioner was condemned unheard.

14. *Per contra*, learned counsel for the University defended the impugned notice and order of termination. It was submitted that Petitioner was appointed only as a Visiting Faculty vide letter dated 02.08.2019 as per guidelines laid down vide Notification dated 20.07.2016 for a period of one year or on need basis with mutually agreed honorarium and facilities at the discretion of the Vice-Chancellor of the University. His period was extended as per requirement by another one year up to 05.08.2021, however, before the Petitioner could take up his work, his services were terminated with immediate effect. Since Petitioner had represented on 15.01.2021 against the termination order, he was called for a personal hearing in which he was informed that his work was not up to the mark there being large scale complaints received from the students and therefore his services could not be continued.

15. Learned counsel sought to explain that a complaint dated 18.09.2020 was received from a student of Semester II of ECE-II (2023 batch) on two counts, firstly, Petitioner was not taking his classes properly and secondly, assessment of the answer sheets was not correctly made. There were also complaints from 50 students in the form of emails, WhatsApp as well as handwritten, which pertained to assessments made by the Petitioner in course Mathematics-II (Course mode-FCMT007). The students were of B.Tech. (ME), B.Tech. (IT), etc. Based on these complaints, on 30.09.2020 a Committee was constituted for random checking of the



answer sheets and 5 answer sheets were randomly evaluated. The Committee found considerable difference in awarding marks and therefore in the interest of the students and reputation of the University, it recommended that each answer sheet of the OBE as well as MSE Examination taught by the Petitioner be re-evaluated. Committee also carried out full evaluation of assignments of 223 students and finding anomalies, recommended upgradation in case of 194 students.

16. It was further submitted that based on the report of the Committee, the Controller of Examination recommended that Petitioner should be debarred from any kind of examination activities in the interest of students and the University. Taking cognizance of the recommendation and pursuant to the discussions held between VC-NSUT, Dean, Faculty of Science and HoD, Mathematics, the Vice-Chancellor of the University decided that the services of the Petitioner were required to be terminated with immediate effect. In order to safeguard the Petitioner from any stigma, a simpliciter order was issued on 31.12.2020 disengaging the Petitioner.

17. On the legal front, learned counsel for the University argued that Petitioner was only a Visiting Faculty and his appointment as well as continuation was based on his work, conduct and performance and was at the discretion of the Vice-Chancellor. No vested legal right accrued in favour of the Petitioner to enforce the contract and insist that he be continued. As per the guidelines for appointment of Visiting Faculty notified on 20.07.2016 and 07.11.2019, Visiting Faculty are not 'employees' of the University and therefore provision of Statute



24(4) of First Statutes will have no applicability. Induction of the Petitioner as a Visiting Faculty is not as per the Statute and is purely as per the guidelines in the two Notifications. Three essential postulates are important pertaining to the appointment of a Visiting Faculty viz. they are engaged only against vacant positions up to the age of 70 years; there will be no financial liability for Chair Professors on the Government; and faculty engaged under Adjunct and Honorary shall not get any salary, fee or compensation for services rendered. All direct expenses such as travel, accommodation, etc. are reimbursed on actual basis. Remuneration will be paid if they are taking a full course and shall be at par with remuneration of 'A' category of Guest Faculty/Part-time Faculty in NSUT.

18. It was urged that it is incorrect for the Petitioner to argue that principles of natural justice were violated inasmuch as a personal hearing was given to the Petitioner on 18.02.2021 by the Registrar, Deputy Registrar (Admn.) and HoD (Mathematics). He was apprised of the reasons for termination and subsequently a detailed order was passed which was communicated to the Petitioner. Petitioner was completely aware of the complaints of the students made against him and it is wrong to even urge that he was ignorant of the allegations. In the absence of any vested right in favour of the Petitioner, he cannot claim that the termination order be set aside, more particularly, in light of the serious allegations and writ petition deserves to be dismissed as reinstating the Petitioner would not be in the interest of the students and the University.

19. I have heard learned counsels for the parties and examined their rival contentions.



20. The only issue that is required to be adjudicated in the present writ petition is whether the services of the Petitioner as a Visiting Faculty of the University could be terminated without issuance of a show cause notice under Statute 24(4) of the First Statutes and/or in violation of the principles of natural justice. While the Petitioner contends that he was an 'employee' of the University and can only be removed by procedure laid down in Statute 24(4), the University contends otherwise. Insofar as the argument of principles of natural justice is concerned, the stand of the Petitioner is predicated on *audi alteram partem* and the University refutes the submission by arguing that there were serious allegations against the Petitioner and it was not in the interest of the students of the University to continue his services and once the matter has been examined by a Committee constituted for the said purpose, no further hearing was required to be given. An additional point raised by the University is that during the pendency of the writ petition, pursuant to a representation made by the Petitioner he was called for a personal hearing and therefore, in any case there is no violation of principles of natural justice.

21. The first contention that requires to be examined is whether the case of the Petitioner is covered under Statute 24(4) of the First Statutes. Clauses (1), (2), (3) and (4) are extracted hereunder for ready reference:-

**“24. Removal of employees of the University:—(1)Where there is an allegation of serious misconduct against a teacher, a member of the academic staff or any other employee of the University, the Vice-Chancellor may, in the case of a teacher or a member of the academic staff, or the authority competent to appoint (hereinafter referred to as appointing authority) in the case of any other employee, as the case may be, by order in writing, place such teacher, member of the academic staff or other employee as the case may be, under suspension and shall forthwith report to the**



*Board of Management the circumstances in which the order was made.*

*(2) Notwithstanding anything contained in the terms of the contract of appointment or in any other terms of conditions of service of the employees, the Board of Management in respect of teachers and other academic staff, and the appointing authority, in respect of other employees, as the case may be, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.*

*(3) Save as aforesaid, the Board of Management, or the appointing authority, as the case may be, shall not be entitled to remove any teacher, any member of the academic staff or any other employee except for a justified cause and after giving three months' notice to the person concerned or on payment of three months' salary to him/her in lieu thereof.*

*(4) No teacher, member of the academic staff or other employee shall be removed under Clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him/her."*

22. Plain reading of the Statute shows that there is a proscription against removal of a teacher, member of the academic staff or other employee under Clause (2) or Clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him/her. Clause (2) is an enabling provision which empowers the Board of Management to remove on grounds of misconduct and is qualified by Clause (3) which provides a caveat that removal can only be called for justified cause after giving three months' notice or on payment of three months' salary in lieu thereof. The dispute between the parties hinges on interpretation of the word 'employee' as according to the University, Petitioner does not fit into the definition, being a Visiting Faculty. Be it noted that 'employee' is not defined under the First Statutes and the definition is in Act 2017. Section 2(k) defines an 'employee' while 2(w) defines 'staff' and the



definitions are extracted below for ready reference:-

*“2. **Definitions:-** In this Act, unless the context otherwise requires –*

*(k) “**employee**” means any person appointed by the University;*

*(w) “**staff**” means all teaching and non-teaching staff of the University.”*

23. ‘Employee’ has been defined under the Act as any person appointed by the University and ‘staff’ means all teaching and non-teaching staff. The word ‘appointment’ under the Black’s Law Dictionary means ‘*an office occupied by someone who has been appointed*’ and in Oxford Dictionary means ‘*an act of assigning a job or position to someone*’. Petitioner has placed on record minutes of the meeting held on 30.07.2019 for appointments to the position of Professor Emeritus, Adjunct Faculty and Visiting Faculty. Appointment of the Petitioner was made pursuant to selection by a Committee comprising of four Members and headed by the Vice Chancellor as Chairperson. The minutes also record the terms and conditions of appointment of Visiting Faculty which include that Visiting Faculty Members are expected to work full time taking extra time responsibilities at par with regular faculty members. They would be engaged only against vacant positions up to the age of 70 years. The induction was for a period of one year initially or on need basis. It is clarified that they will not be paid honorarium more than the salary of a regular Professor and would not be entitled to retiral benefits. Minutes of the meeting are extracted hereunder:-

**“DEPARTMENT OF HUMANITIES & SOCIAL SCIENCE  
(MATHEMATICS)**

**MINUTES OF THE MEETING HELD ON 30.07.2019 FOR  
APPOINTMENTS TO THE POSITION OF PROFESSOR**



## **EMERITUS, ADIUNCT FACULTY AND VISITING FACULTY IN NSUT**

A meeting of the Committee constituted for the selection of Professor Emeritus, xxxxx and Visiting Faculty in NSUT as per the Guidelines issued vide Notification No.xxxx/2016 (Action)/NSIT/972 dated 01.06.2016 and subsequent concurrence of the xxxx Department Govt. of NCT of Delhi vide CD no. 0003387889 was held on 30.07.2019 at xxxxx office of the Vice chancellor, NSUT. The following were present :

- |    |                                            |             |
|----|--------------------------------------------|-------------|
| 1. | Prof. J.P. Saini, Vice Chancellor          | Chairperson |
| 2. | Prof. Sanjeev Thakur, Faculty of Law       | Member      |
| 3. | Prof. (M.S.) Sujata Sengar, Dean, Academic | Member      |
| 4. | Prof. A.K. Dubey, Senior Most Professor    | Member      |
| 5. | Prof. J.K. Singh, HOD, Mathematics Deptt.  | Member      |

The committee considered applications of the candidates and discussed the quashing & experience of each applicant, on the basis of merit of each, the committee give its recommendations to department of mathematics as per details given below :

### Department-Mathematics

| S. No. | Name of candidate          | D.O.B.     | Position Considered | Remarks                |
|--------|----------------------------|------------|---------------------|------------------------|
| 1.     | Dr. Mahendra Pal Chaudhary | 05.03.1975 | Visiting faculty    | <b>Recommended</b>     |
| 2.     | Dr. S.P. Khare             | 02.12.1952 | Adjunct Faculty     | <b>Not Recommended</b> |

### Terms and conditions

#### Visiting Faculty

- (a) They faculty members are expected to work full time taking extra time responsibilities at par with regular faculty members.
- (b) Visiting Faculty may be provided with mutually agreed honorarium and facilities (e.g. residential accommodation) on the discretion of Vice Chancellor.
- (c) Visiting Faculty would be engaged only against the Vacant position up to the age of 70 years.
- (d) Honorarium for the visit faculty shall not be more than the salary of regular professor xxxx pension of the University. They shall not be entitled for any retirement benefits. the honorarium shall be equivalent to either the salary of a Professor or the honorarium/remuneration fixed by Govt. of India from time to time.
- (e) They may be inducted for a period of initially one year/or on need basis from the date of acceptance and physically joining. However, in the event of appointment of regular faculty, the services may be dispensed off.



|                                      |                                          |                                       |
|--------------------------------------|------------------------------------------|---------------------------------------|
| Sd/-<br>(Prof. A.K. Dubey)<br>Member | Sd/-<br>(Prof. Sanjeev Thakur)<br>Member | Sd/-<br>Prof. Mrs. Sujata Sengar      |
| Mrs. Sujata Sengar<br>Member         | Sd/-<br>Prof. J.P. Saini<br>Chairperson  | Sd/-<br>(Prof. J.K. Singh)<br>Member" |

24. Pursuant to the selection, an offer of appointment was issued to the Petitioner as Visiting Faculty in Department of Mathematics on 02.08.2019. Appointment was initially for one year and terms and conditions incorporated in the letter were replicated from the minutes of the meeting and are as follows:-

"F.No.122(481)/2017/Estt./NSUT/734

Dated : 02.08.19

Sub: Offer of appointment as Visiting Faculty in the Department of Mathematics at NSUT.

As per the Guidelines issued vide Notification No.99(44)/2016-BOG(Action)/NSIT/972 dated 1.6.2016 and subsequent concurrence of the Finance (Expenditure-VI) Department, GNCTD, an appointment is offered to you as Visiting Faculty in the Department of Mathematics, NSUT, initially for a period of one year on the following terms and conditions :

- They faculty members are expected to work full time taking extra time responsibilities at par with regular faculty members.
- Visiting faculty may be provided with mutually agreed honorarium and facilities (e.g. residential accommodation) on the discretion of Vice Chancellor.
- Visiting Faculty would be engaged only against the vacant positions up to the age of 70 years.
- Honorarium for the visit faculty shall not be more than the salary of regular Professor minus pension, of the University. They shall not be entitled for any retirement benefits.
- They may be inducted for a period of initially one year/or on need basis from the date of acceptance and physically joining. However, in the event of appointment of regular faculty, the services may be dispensed off.

You will be abide by the terms and conditions of service and rules of discipline and conduct and any other rules framed therein from time to time or otherwise as applicable to other University employees.



For your convenience, acceptance form is enclosed. You are requested to give your willingness to serve the University within a week from the issuance of this offer of appointment. We hope that, you will share your valuable vast experience in the field of research and teaching for the benefit of students as well as faculty members.

This issues with the approval of Vice-Chancellor, NSUT

Sd/-  
(Suresh Saraf)  
Assistant Registrar (Admn.)

Encl : Acceptance Form

Dr. Mahendra Pal Chaudhary  
63, Ber Sarai, New Delhi-110016

Copy forwarded to :-

1. HOD, Mathematics Deptt., NSUT
2. A.R. to Vice Chancellor, NSUT
3. P.S. to Registrar, NSUT

Sd/-  
(Suresh Saraf)  
Assistant Registrar (Admn.)”

25. Conjoint reading of the minutes of the meeting and the offer letter evidence that Petitioner was ‘appointed’ as Visiting Faculty and was expected to work ‘full time taking academic responsibilities at par with regular faculty members’ and was to be paid agreed honorarium and facilities including residential accommodation at the discretion of Vice Chancellor. Significantly, on need basis Petitioner was entitled to serve up to the age of 70 years. Therefore, to my mind, it cannot be argued by the University that Petitioner was ‘not appointed’ by the University and going by the plain definition of the word ‘employee’, Petitioner would be treated as an employee of the University. In fact, in the short affidavit filed by the University, it is repeatedly asserted that the Petitioner was temporarily appointed without any fixed remuneration at the discretion of the Vice Chancellor.



26. First Statutes have been issued in exercise of powers conferred by sub-Section (1) of Section 32 read with Section 31 of the Act 2017 and therefore, the definition of ‘employee’ will have to be taken from the said Act for the purpose of interpreting the same in Statute 24(4). Therefore, the case of the Petitioner, as rightly contended on his behalf, would be covered by the said Statute and his services could not be dispensed with, without giving a show cause notice against the proposed action.

27. Even assuming for the sake of arguments that Statute 24(4) is inapplicable to the present case, Petitioner was entitled to a show cause notice on the backdrop of principles of natural justice and the rule of *audi alteram partem* which enforces the equality principle enshrined against Article 14 of the Constitution of India. Courts have repeatedly held that rules of natural justice do not supplant but supplement rules and regulations. In *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress and Others*, 1991 Supp (1) SCC 600, a five-Judge Bench of the Supreme Court held that rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Significantly, in *Mangilal v. State of M.P.*, (2004) 2 SCC 447, the Supreme Court declared that even if a Statute is silent, principles of natural justice would have to be impliedly complied with where substantial rights of the parties are considerably affected. There is a wealth of judicial precedents on the importance of principles of natural justice requiring an opportunity of hearing to a party to explain his/her case before an action can be taken and this, in my view, becomes pronounced where there are serious



allegations and it is not correct for the University to urge that principles of natural justice can be given a go-by because the allegations are serious as this would be an arguing contra to the law laid down by the Supreme Court. In order to avoid prolixity, I may refer to a recent judgment of the Supreme Court in *Aureliano Fernandes v. State of Goa and Others*, 2023 SCC OnLine SC 621, where the entire law on principles of natural justice *audi alteram partem* and its significance in service jurisprudence has been captured. Relevant paras are as follows:-

**“G. ARTICLE 14 : BEDROCK OF THE PRINCIPLES OF NATURAL JUSTICE**

34. Principles of natural justice that are reflected in Article 311, are not an empty incantation. They form the very bedrock of Article 14 and any violation of these principles tantamounts to a violation of Article 14 of the Constitution. Denial of the principles of natural justice to a public servant can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness and would result in depriving a public servant of equal protection of law.

35. Article 14, often described as the ‘Constitutional Guardian’ of the principles of natural justice, expressly forbids the State, as defined in Article 12, from denying to any person, equality before the law or equal protection of the laws. Article 14 provides an express guarantee of equality before the law to all persons and extends a protection to them against discrimination by any law. Article 13(3)(a) defines law to include any ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India, the force of law. Thus, principles of natural justice guaranteed under Article 14, prohibit a decision-making adjudicatory authority from taking any arbitrary action, be it substantive or procedural in nature. These principles of natural justice, that are a natural law, have evolved over a period of time and been continuously refined through the process of expansive judicial interpretation.

**H. THE TWIN ANCHORS : NEMO JUDEX IN CAUSA SUA AND AUDI ALTERAM PARTEM**

36. The twin anchors on which the principles of natural justice rest in the judicial process, whether quasi-judicial or administrative in nature, are *Nemo Jux In Causa Sua*, i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and *Audi Alteram Partem*, i.e. a person



*affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken.*

37. *How deeply have Courts internalised and incorporated the principles of natural justice into the Constitution can be perceived from the seven Judge Bench decision in the case of Maneka Gandhi v. Union of India and Another, (1978) 1 SCC 248. In this case, where a challenge was laid to the order of impounding the passport of the appellant, which was silent on the reasons for such an action and the respondent-State had declined to furnish the reason therefor, it was held that life and liberty of a person cannot be restricted by any procedure that is established by law, but only by procedure that is just, fair and reasonable. Quoting the audi alteram partem rule and equating it with “fair play in action”, Justice P.N. Bhagwati (as he then was) had authored the judgment for the majority and had observed that:*

*“14. ....The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk, 1949 1 ALL ER 109 that “whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case”. What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise.....”*

38. *In the captioned case, citing the judgment of a Constitution Bench of this Court in Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 wherein it was held that fundamental rights are not a water tight compartment, the Court observed as under:—*

*“The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14”*

39. *The emphasis was on the Court's attempt to expand the reach and ambit of the fundamental rights guaranteed in the Constitution rather than attenuate their meaning and content by a process of*



judicial construction. Relying on the minority judgment rendered by Justice Fazal Ali in the case of *A.K. Gopalan v. State of Madras*, 1950 SCC 228 this Court went on to hold in *Maneka Gandhi's case* (supra) that the procedure required to be prescribed under Article 21 must include four essentials namely, notice, opportunity to be heard, impartial tribunal and ordinary course of procedure. It was observed that even on principle, having regard to the impact of Article 14 on Article 21, the concept of reasonableness must be projected in the procedure contemplated by Article 21.

40. In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, (1991) Supp (1) SCC 600, a five-Judge Bench of this Court highlighted how essential it is to afford a reasonable opportunity to an employee to put forth his case in a domestic inquiry and the requirement of an employer to comply with the principles of natural justice and fair play, in the following words:

“202. ....It is now well settled that the ‘audi alteram partem’ rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. **Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally..... Rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.....**

[emphasis added]

xxx xxx xxx

316. Thus it could be held that Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty. **The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment. The exercise of discretionary power wide off the**



*mark would breed arbitrary, unreasonable or unfair actions and would not be consistent with reason and justice. The provisions of a statute, regulations or rules that empower an employer or the management to dismiss, remove or reduce in rank of an employee, must be consistent with just, reasonable and fair procedure. It would, further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Article 21 of the Constitution. Any procedure prescribed to deprive such a right to livelihood or continued employment must be just, fair and reasonable procedure. In other words an employee in a public employment also must not be arbitrarily, unjustly and unreasonably be deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise any law or rule in violation thereof is void."*

*[emphasis added]*

41. The significant role played by procedural fairness in the backdrop of internalising the principles of natural justice into the Constitution cannot be overstated. This aspect has been highlighted by a Division Bench of this Court of which one of us, [Hima Kohli, J], was a member, in *Madhyamam Broadcasting Limited v. Union of India*, (2023) SCC Online 366. Speaking for the Bench, Chief Justice D.Y. Chandrachud stated:

*"53. The judgment of this Court in Maneka Gandhi (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, **the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome.** In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional*



*requirement entrenched in Articles 14, 19 and 21. The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing.”*

**- [emphasis supplied]**

42. In *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262, quoting with approval the judgment *In re : H.K. (All Infant)*, (1967) 1 All ER 226, this Court held that:

*“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely : (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative inquiry may have more far reaching effect than a decision in a quasi-judicial inquiry.....”*

**- [Emphasis supplied]**



## **I. FAIR ACTION AND IMPARTIALITY IN SERVICE JURISPRUDENCE:**

43. In the context of service law, it is, therefore mandatory to afford a Government servant or an employee, a reasonable opportunity of being heard before an order is passed. In *Mangilal v. State of M.P.*, (2004) 2 SCC 447, this Court declared that even if a Statute is silent and there are no positive words in the Act or the Rules made thereunder, principles of natural justice must be observed. This is what the Court has held:

*“10....Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves.....”*

44. In *Tulsiram Patel's case* (supra), observing that violation of the rules of natural justice would result in arbitrariness which would amount to discrimination, the Constitution Bench made the following observations:

*“95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14 : therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.*

*96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram*



*partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a Court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. **Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.....**"*

**- [emphasis supplied]**

45. At the same time, a note of caution was added in the captioned case and the Court observed that the rules of natural justice are neither statutory rules nor are they cast in stone. They are flexible and can be adapted and modified by statutes, depending on the exigencies of different situations, the facts and circumstances of the case and the framework of the law.

46. In *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664, in his dissenting judgment, Justice O. Chinnappa Reddy, had made the following pertinent observations:—

*"106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Dr. Bina pani, AIR 1967 SC 1269, A.K. Kraipak, (1969) 2 SCC 262, Mohinder Singh Gill, (1978) 1 SCC 405, Maneka Gandhi, (1978) 1 SCC 248. They are now considered so fundamental as to be "implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. **Where authority functions under a statute and the statute provides for the observance of the principles of***



*natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced.....”*

**- [emphasis supplied]**

47. Thus, ordinarily, courts interpret statutory provisions in sync with the aforesaid principles of natural justice on a premise that no statutory authority would violate the fundamental rights enshrined in the Constitution. When it comes to authorities that are expected to discharge judicial and quasi-judicial functions, the rule of audi alteram partem applies with equal force. Reasonableness infuses lifeblood in procedural matters, be it elements of the notice, the contents of the notice, the scope of inquiry, the material available or an adequate opportunity to rebut such material. All of this is to avoid miscarriage of justice at any stage. This is of course fluid and subject to adapting to the demands of a situation in the given facts of a case.”

28. In the present case, it is an admitted position that no show cause notice was given to the Petitioner and the notice of termination was issued on 31.12.2020 without giving any opportunity of hearing. The impugned order reads as follows:-

**NETAJI SUBHAS UNIVERSITY OF TECHNOLOGY**  
A STATE UNIVERSITY UNDER DELHI ACT 06 OD 2018, GOVT. OF  
NCT OF DELHI  
(FORMERLY NETAJI SUBHAS INSTITUTE OF TECHNOLOGY)  
Azad Hind Fauz Marg, Sector-3, Dwarka, New Delhi-110078  
Telephone: +91-11-25099020 Fax: +91-11-25099022  
Website: <http://www.nsut.ac.in>

No. F. 122/(481)/2020/Estt./NSUT/812A

Dated: 31/12/2020

**OFFICE ORDER**

On the recommendation of the Dean, Faculty of Sciences, NSUT and HOD, Mathematics, NSUT, the services of Prof. M.P. Chaudhary, visiting Faculty, Department of Mathematics is hereby terminated with immediate effect.

This supersedes all earlier orders.

(Suresh Saraf)  
Asst. Registrar (Admn)



29. The order does not even indicate the reasons for terminating the services of the Petitioner with immediate effect and it is only in the affidavit filed in this Court that it is explained that there were complaints against the Petitioner with regard to not taking classes properly and not evaluating the answer sheets of the students correctly. Once these serious allegations were levelled, Petitioner should have been put to a show cause notice along with a copy of the Committee's report and the answer sheets alleged to have been re-evaluated by the Committee to explain his case. The impugned action is not in consonance with principles of natural justice and/or Statute 24(4) of the First Statutes. Interestingly, the appointment letter does not provide any separate clause permitting the University to dispense with the services of the Petitioner, which is ordinarily incorporated in short-term appointments and in fact, to the contrary provides that Petitioner will abide by the terms and conditions of service and rules of discipline and conduct and any other rules framed from time to time or otherwise as applicable to other University's employees. Therefore, even by virtue of this clause, Statute 24(4) becomes directly applicable to the Petitioner. It bears repetition to state that even in the absence of specific terms of employment mandating adherence to the rule of *audi alteram partem*, principles of natural justice have to be read into the service conditions, as held by the Supreme Court.

30. It is stated in the affidavit and was also urged during the hearing that Petitioner was called for a personal hearing during the pendency of the writ petition and this was sufficient compliance with principles of natural justice. University has placed on record the order passed



after personal hearing on Petitioner's representation and the same reads as under:-

*"A representation dated 15.01.2021 was received in the office of NSUT from Prof. M.P. Chaudhary, the Ex visiting faculty in Mathematics. In his representation, Prof. Chaudhary had raised the issue of illegal termination of his services as Visiting Faculty in Department of Mathematics, NSUT w.e.f. 31.12.2020 because it was without any due Notice/Show Cause Notice or giving him any opportunity of being heard.*

*Consequent upon the representation, a personal hearing was scheduled for Prof. M.P. Chaudhary on 18.02.2021 at 3.30 P.M. The hearing was also attended by Prof. J.K. Singh, HoD, Mathematics and Sh. Mukesh Kumar Sharma, Deputy Registrar (Admn.), NSUT.*

*During hearing proceedings, Prof. Chaudhary has reiterated that no grounds and justification was mentioned in his termination order and no opportunity was granted to him to explain his version before termination. He further stated that the matter is already in the Court in which he has prayed that the termination order dated 31.12.2020 be quashed with retrospective effect. He also requested that his tenure which was earlier extended upto 05.08.2021 may continue till that date.*

*Prof. Chaudhary further submitted that at this stage when the matter is already in the Hon'ble High Court, issuing any detailed order giving justification of his termination won't be of any use. However, it was decided that since he has been given a hearing to submit his view points, it would be appropriate that a detailed speaking order mentioning the grounds and justification of his termination be issued. This will also ensure the principle of transparency; therefore, the present order is being issued so that the aggrieved may know the reasons and grounds of his termination.*

*Prof. M.P. Chaudhary was appointed to the position of Visiting Faculty on 06.08.2020 for a period of one year. His services were extended for another year w.e.f. 06.08.2020 to 05.08.2021 with the approval of Competent Authority. However, after extension of the contract, in September 2020, complaints were received from the students on two counts, firstly that Prof. Chaudhary was not taking the class properly and secondly that assignment of answer sheets was not correctly made by Prof. Chaudhary. Complaints of 50 students in the form of Email, Whatsapp and hand written etc. were received from students of B.Tech. (ME), B.Tech. (IT) Section-II, B.Tech. (ECE) Section-II and B.Tech (CSE) Section-I of academic year 2019-20, regarding the assessment made by Prof. M.P. Chaudhary in the course Mathematics-II (Course code: FCMT007). On receipt of these complaints, it was decided by the university to*



constitute a committee to verify the contents of the complaints. Initially, the committee evaluated 05 answer scripts of End Semester Examination of three sections as mentioned above (picked randomly class wise) taught and evaluated by Prof. M.P. Chaudhary. Following were the observations & recommendations of the committee:

- “It is clear from the above sample re-evaluation that answer scripts have a considerable difference in awarded marks in OBE (Time bound assessment) answer scripts.
- Based on the above fact and in the best interest of the students and the reputation of the University and the Department, the committee recommends that in such a scenario each answer script of the OBE as well as mid semester examination (MSE) taught and evaluated by Prof. M.P. Chaudhary be re-evaluated. Further, it is also recommended that other teachers/faculty member (other than Prof. M.P. Chaudhary) may be involved in this task”.

The committee clearly mentioned that assessment of Prof. M.P. Chaudhary was faulty and recommended the re-checking of all Mid Semester Answer scripts along with the End Semester evaluation (OBE) earlier assessed by Prof. Chaudhary.

Therefore, re-checking of Answer Script (OBE as well as MSE) of course “Mathematics II”, course code ‘FCMT007’ was performed by another committee of examiners constituted with the approval of Competent Authority.

The re-evaluated grades of the students in the course Mathematics-II (Course code: FCMT007) were compared with the previously assessed grades and significant changes were observed in the new grades. Thus, the comparative grade analysis clearly depicts the lapses found in the assessment of Dr. M.P. Chaudhary (Faculty of Mathematics Department).

Thereafter, a consolidated report of the above re-assessment exercise was received from the Controller of Examination, NSUT which indicates that the answer script of **223** students were re-assessed by the Committee. It could be revealed that **194** Students were upgraded, no student was downgraded and in case of **29** students, no change was reported. The Controller of Examination also recommended that Prof. M.P. Chaudhary should be debarred from any kind of examination activities in the interest of students and University. Taking cognizance of the said recommendation, matter was discussed by the Vice Chancellor (NSUT) with Dean, Faculty of Sciences and HoD, Mathematics. Based on the said discussions and recommendations from HoD, Mathematics. & Dean, Faculty of Sciences, it was decided that the services of Dr. M.P. Chaudhary, Visiting Faculty in Mathematics Department are no more required



*from next Even Semester, 2021 and to terminate him from the services of Visiting Faculty with immediate effect.*

*The termination has been done to ensure that such activities and misconduct is not repeated in future which can lead to have a negative impact on the career of the students of the NSUT which is a reputed and premier technical University of the Country and producing a large number of Engineers and Entrepreneurs who are helping the Society in one way or another. A message was required to be given that such unfair practices can not to be tolerated and accepted.*

*Accordingly, order dated 31.12.2020 was issued thereby terminating the services of Prof. M.P. Chaudhary. The action taken by the University was fair and just considering the gravity of misconduct done by Prof. M P Chaudhary."*

31. A bare reading of the order would show that it only contains a narrative of facts pertaining to Petitioner's appointment, receipt of complaints, appointment of a Committee and its findings and the decision taken thereon by the Competent Authority. The last part of the order provides the reason for termination which was to give a message that unfair practices will not be tolerated and the activities in which the Petitioner indulged are not repeated in the interest of career of students and reputation of the University. Petitioner has categorically stated that he was not given any details/specifics pertaining to the alleged complaints and no document was either served upon him or even shown to him including copy of the allegations. Petitioner was not given opportunity to respond to the allegations and to this Court it seems that the personal hearing was a mere camouflage as the University was conscious that Petitioner had filed a writ petition in this Court alleging violations of principles of natural justice. After perusing the order dated 05.03.2021, this Court entirely agrees with the Petitioner that the order does not refer to copy of the complaints and/or any other documents containing allegations or the report of the



him a chance to explain and this is fortified by the fact that not a single contention on behalf of the Petitioner even finds mention in the order leave alone dealing with the same. It is obvious to the Court that these proceedings were conducted as a mere formality and the termination of the Petitioner being in breach of Statute 24(4) and violative of principles of natural justice is unsustainable in law.

32. Ordinarily, in short-term or contractual appointments, Courts do not interfere as these cannot be enforced and usually have provisions which provide for the mode of termination. The terms and conditions of appointment of the Petitioner are, however, different and distinct for the reasons: (a) the appointment *albeit* initially for one year on need basis was extendable up to the age of 70 years and the Petitioner, going by the affidavit filed in support of the writ petition was 45 years in 2021 and had a long way to go if the appointment had not been terminated; (b) even though as a Visiting Faculty, Petitioner was expected to work full time taking academic responsibilities at par with regular faculty members; and (c) rules of discipline and conduct as applicable to other employees of the University were applicable to the Petitioner. Therefore, in the present case, non-adherence to Statute 24(4) and/or principles of natural justice becomes fatal to the case of the University and the impugned termination order deserves to be quashed, in view of the judgment of the Supreme Court in *Aureliano (supra)*.

33. It is a matter of record that Petitioner was appointed on 02.08.2019 for a period of one year and on 05.08.2020 his appointment was extended for another one year from 06.08.2020 till 05.08.2021 *albeit* by the impugned termination notice dated



31.12.2020 he was terminated. Two consequences therefore follow on account of the termination notice i.e. the extended period of one year stood truncated and the second fall out was that he was not considered for further extension which could have gone up to 70 years of age.

34. For all the aforesaid reasons, the impugned termination notice dated 31.12.2020 is hereby quashed and set aside. University shall issue a show cause notice to the Petitioner within a period of four weeks from today, granting him opportunity to file his response within two weeks from the date of receipt of the show cause notice. Needless to state the show cause notice shall be accompanied by all relevant documents including complaints etc. containing allegations against him and/or report of the Committee, which is stated to be against him and is a cause for his termination. After considering the response filed by the Petitioner, decision shall be taken by the University, in accordance with law, within a period of three months from today. Reasoned and speaking order shall be passed by the University, which shall be communicated to the Petitioner, who shall be at liberty to take recourse to legal remedies in case of any surviving grievances.

35. Writ petition is allowed in the aforesaid terms and disposed of.

**JYOTI SINGH, J**

**JULY 05, 2023/kks**