FULL BENCH

Before A. D. Koshal, S. S. Sandhawalia & P. C. Jain, JJ

GURU NANAK UNIVERSITY, AMRITSAR,—*Appellant.*

versus

DR. (MRS.) IQBAL KAUR SANDHU, AND OTHERS,—

Respondent.

L.P.A. No. 189 of 1975.
and
C.M. No. 1213 of 1975.

May 17, 1975.

Guru Nanak University Calendar (1972)—*Guru Nanak University Statutes—Statute* 31 (2)—*Whether directory in nature—Constitution of India* (1950)—*Articles* 226 *and* 311—*Disputed questions of fact —Writ in the nature of Certiorari—Whether can be issued—Documents executed or authenticated by respectable persons—High Court's findings on mere affidavits, regarding the documents being forged— Such finding—Whether tantamounts to a finding of Criminal forgery against those persons without their being heard—Prejudicial observations by a Court against a person not a party or a witness in proceedings before it—Whether should be made—Non-confirmation of a probationer by employer—Whether attaches stigma to such probationer—Decision of employer about the work and conduct of an employee—Court—Whether can go behind it—Rules of natural justice —When can be invoked.*

Held, that the dominent object and purpose of statute 31 of Guru Nanak University Statutes, patently is to provide a procedure for a sound assessment of the work and conduct of a probationer in order to enable the appointing authority to either confirm him therein or in the alternative to extend the period of probation or to dispense with his services. To effectuate that purpose sub-clause (2) of the Statute 31 prescribes the normal mode and manner of assessing and appreciating the work of the probationer through the instrumentality of his Head of Department or the Controlling Officer. The twin provisions in this context are the sending of a report by the latter with a recommendation for confirmation or otherwise, with a further prescription that the same should at least be done three months before the date of the expiry of probation. The sending of the report is a mere procedural mode for conveying information to the appointing authority about the work and conduct of the employee but it is certainly not a

matter which is of such a great and absolute significance that no action can be taken by the appointing authority in the absence of the report even though the matter may be glaringly in the knowledge of the appointing authority on its own. A construction of the statute which tends to rob the employer of his basic right to assess the work and conduct of the probationer by all means, and if not satisfied therewith then to refuse to confirm him in the post, has to be avoided because it will manifestly defeat the very purpose and object of the whole of statute 31. The provision regarding the sending of report is not so sacrosanct that absence of a report would either vitiate the action of the employer or become a total fetter on his right to confirm the probationer or otherwise. Hence Statute 31 (2) is patently directory in nature and any infringment of it will not, in any way, go to the root of the matter so as to vitiate the action of the employer under sub-clauses (3) and (4) of the statute, which in terms is the basic right to confirm or dispense with the services of a probationer depending upon the nature of his work and conduct during the relevant period. Similarly, the provision of 3 months as mentioned in this statute for the despatch of report before the date of the expiry of the probationary period is clearly directory in nature. It is a convenient prescription of time which may ordinarily be adhered to but the violation whereof would be of no great significance.

Held, that the jurisdiction of the High Court to issue a Writ of Certiorari is normally confined to facts alleged and admitted on affidavits or those not seriously trasversed on the record. The writ is an extraordinary remedy resorted to when the basic factual position is not in dispute. Writ jurisdiction is not and cannot be made a substitute for regular trial by way of a suit for determination of contentious matters in which the parties are diametrically opposed on material facts.

Held, that it is unfair and risky to determine intricate and disputed facts in a summary manner on affidavits alone wihtin the extraordinary writ jurisdiction. Hence when the High Court in the exercise of its writ jurisdiction gives a finding on mere affidavits regarding a document which has been subscribed to as authentic by very respectable persons who are parties thereto or are executants thereof, it amounts to a trial *in absentia* of these persons and would tantamount to a finding of Criminal forgery against them without even affording them the least opportunity to show otherwise.

Held, that prejudicial observations should not be made by a court against a person who is neither a party nor a witness in proceedings before it. It amounts to a denial of justice to make adverse reflections upon the character of such persons. It is more so in the civil jurisdiction and particularly in the limited sphere of the writ jurisdiction which ordinarily proceeds on the facts admitted on affidavits.

Held, that the appointing authority when refusing to confirm the probationer is bound to arrive at some negative finding regarding the probationer's work and conduct during the probationery period. If it were of a satisfactory nature, the confirmation would obviously follow. If a contrary decision is to be arrived at, a finding by the appointing authority that he is not satisfied with the work and conduct of the probationer is inevitable. The arriving at such a finding and conveyance thereof to the probationer is neither penal nor stigmatic. Candidly conveying something so innocuous to the probationer that he has not measured up to his job and his work and conduct in the subjective satisfaction of the employer has not been up to the mark cannot be deemed to be a matter which is punitive.

Held, that the matter of satisfaction of an employer about the work and conduct of his employee is entirely personal to the former and it is he alone who can opine about the same. It is not the province of the Courts to ordinarily go behind that view arrived at within the four corners of his right to do so. It is entirely erroneous to consider the matter of the satisfaction of the employer about the work and conduct of his employee as if it were a *lis* betwixt them in which each side must marshal up his facts and arguments in extenso and then a speaking and rational order be recorded for holding whether the work was satisfactory or otherwise. It is unnecessary and even dangerous to induct any such novel or nebulous concept in a matter so essentially simple as the satisfaction or otherwise of an employer *qua* the work of his employee.

Held, that the rules of natural jusitce are not embodied rules, nor can they be elevated to the position of fundamental rights. Indeed, they can be invoked only in an area where the statute is silent and general principles demand the invocation or attraction of these rules. The rules of natural justice even where they come into play can be either excluded or curtailed by the express terms of a statute.

Case referred by the Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia & Hon'ble Mr. Justice Prem Chand Jain on 7th May, 1975 to a Full Bench for decision of significant and intricate issues of law as also of facts. The Full Bench consisting of Hon'ble Mr. Justice A. D. Koshal, Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Prem Chand Jain finally decided the case on 17th May, 1975.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Ajit Singh Bains, dated March 4, 1975 in Civil Writ Petition No. 177 of 1974.

CIVIL MISC. No. 1213 of 1975.

Application under section 151 of the Code of Civil Procedure on behalf of Sardar Bishan Singh Samundari, Vice-Chancellor, Guru

Nanak University, Amritsar praying that the strictures passed against the applicant by the Hon'ble Mr. Justice Ajit Singh Bains on March 4, 1975 in Civil Writ Petition No. 177 of 1974 be expunged.

Kuldip Singh and R. S. Mongia, Advocates, *for the appellant.*

B. S. Singh, K. G. Chaudhry and Miss V. Singh, Advocates, *for the Respondents.*

JUDGMENT

Judgment of the Court was delivered by :—

Sandhawalia, J.—The spinal issue which necessitated a reference to the Full Bench in this appeal under Clause X of the Letters Patent is—Whether Statute 31(2) framed by the Guru Nanak University has been substantially complied with and, if not, so, whether the provisions thereof are mandatory or directory in character ?

(2) A detailed reference to the facts of the case has now indeed become inevitable. However at the very outset, it deserves notice that the matter herein is essentially simple. It revolves around the twin refusal (on June 16, 1973 and October 13, 1974) of the Syndicate of the Guru Nanak University to confirm the petitioner in the post of Secretary Sports (Women) against which she had been appointed on probation for a period of one year.

(3) It is not in dispute that Mrs. Iqbal Kaur Sandhu, petitioner-respondent, had a reasonably distinguished carrer in the narrow and limited field of the women's sports at the University and later at an All-India level. She also secured a Ph.D., degree in Physical education and had considerable opportunities to travel abroad in connection with her profession. However, as the learned counsel for the appellant-University rightly pointed out the issue of these qualifications is hardly relevant to the legal controversy with which alone this Court is concerned. Therefore, any detailed reference to the same becomes unnecessary.

(4) It suffices to mention that at the material time in 1972, the petitioner-respondent was employed as Assistant Directress of Physical Education in the University of Delhi in the pay scale of Rs. 400—40—800—50—950 at a basic salary of Rs. 600 per mensem. On her application, she was selected as Secretary Sports (Women) in the Guru Nanak University, Amritsar, and was apparently motivated to secure this assignment because of the fact that her husband

Mr. M. S. Sandhu was already employed as the Head of the Sports Department in the appellant-University. *Vide* Annexure 'M' dated April 4, 1972, the petitioner-respondent was informed that the Syndicate had approved her appointment in the pay scale above mentioned and her starting pay was to be determined by the Vice-Chancellor and she was directed to see him in this connection. Later, by a communication dated May 4, 1972 (Annexure 'N'), she was further informed that the Vice-Chancellor had been pleased to fix her starting salary at Rs. 600 per mensem plus allowances under the University Rules and it was categorically mentioned therein that her appointment would be on production for a period of one year and her services would be governed under the rules and regulations of the University. In pursuance to the above, the petitioner-respondent joined in the post above mentioned as a probationer on July 22, 1972. However, she represented later that in September she was imminently due to get her next increment at Delhi University when she joined her present post and, therefore, prayed that her salary be fixed at Rs. 640. This prayer, after consideration, was allowed by the Univerity in accordance with the current rules and practice.

(5) It is the case of the appellant-University that the post against which the petitioner-respondent was appointed was primarily administrative in nature and required peculiar talents which were lacking in her and she was hence unable to measure up to the job. The petitioner-respondent continued to serve indifferently as a probationer and it was around March 29, 1973 that the establishment branch of the appellant-University initiated the case for her confirmation as she was due to complete her probationary period by July 21, 1973. In Annexure R-1/1, which is the relevant document, the office-note indicated the above mentioned facts and it was observed that the confirmation of the petitioner-respondent was to be done by the Syndicate and the Vice-Chancellor might wish to include the case in the agenda of the Syndicate meeting to be held on June 16, 1973 with his recommendations. The office communication passed through the hands of the Assistant Registrar, Shri Parkash Singh, on April 2, 1973 and was forwarded to the Deputy Registrar. The relevant diary No. of the note above mentioned is 8170/R, dated April 3, 1973 and Shri Iqbal Singh, Deputy Registrar, recorded the following note thereon on the same date :—

> "Dr. (Mrs.) Iqbal Kaur Sandhu will complete her probationary period on 21st July, 1973. It is suggested that the

opinion of the President, Women Sports Committee may be obtained confidentially about her work and conduct and the case pertaining to her confirmation may be put up to the Syndicate at its meeting to be held in June 1973, alongwith the recommendation of the President Women Sports Committee."

The papers again duly diarised were placed before the Registrar, Mr. Bharpur Singh on April 5, 1973. He opined thereon that though the Vice-Chancellor was competent on his own to make recommendations to the Syndicate, yet if he so desired, he might send for the report of the President of the Women's Sports Committee as suggested by the Deputy Registrar. The very same day, the matter was put up before the Vice-Chancellor and he formally approved the note of the Deputy Registrar which had been concurred in by the Registrar of the appellant-University.

(6) In compliance with the above, the papers were forwarded to Mrs. J. K. Grewal, the then President of the Guru Nanak University, Women's Sports Committee. On April 29, she convened the meeting of the Executive Board of the Guru Nanak University, Women's Sports Committee, at the Lyallpur Khalsa College for Women, Jullundur, to discuss the issue of the respondent's confirmation. Obviously, because the case related to her, the petitioner-respondent was not invited to join or to be present. The meeting was attended by six of the seven members of the Executive Board and the proceedings were recorded under signatures of Mrs. J. K. Grewal,—*vide* Annexure R-2/2, dated May 2, 1973. In this it was recorded that the Board was of the unanimous and firm opinion that in view of her work and conduct, the petitioner-respondent was not capable of holding the administrative post to which she had been appointed and, therefore, no extension be granted to her.

(7) Mrs. J. K. Grewal forwarded her report to the Vice-Chancellor and the matter was placed on the agenda of the Syndicate meeting of June 16, 1973. Annexure 'D-1' is the record of the proceedings relevant to the respondent's case. It expressly makes mention of the fact that the Vice-Chancellor read out the recommendation of the Executive Board, Sports Committee (Women) in regard to the confirmation of the respondent, in the meeting. It is further recorded that Shri Joginder Singh Secretary to Government, Punjab, Education Department, made certain queries regarding the issue and the

Vice-Chancellor replied thereto and then a discussion of the case ensued. Thereafter the Syndicate unanimously resolved that as the work and conduct of the respondent were not satisfactory, she should neither be confirmed in the post nor her probationary period be extended and her services be dispensed with. It was further resolved that in accordance with the University Status, one month's notice or in lieu thereof, one month's salary be given to the respondent. Formal communication of the above-mentioned decision of the Syndicate was conveyed to the petitioner-respondent by the Registrar,—*vide* his communication Annexure 'G/1' dated July 10, 1973. In passing, it may be mentioned that having got wind of the decision of the Syndicate, the petitioner-respondent represented to the Vice-Chancellor that her case be reconsidered by him, but this representation was declined,—*vide* Annexure 'F/1', wherein it was stated that after examining her case from all aspects, the Vice-Chancellor was unable to reopen the issue.

(8) The petitioner-respondent challenged the decision of the Syndicate (Annexure 'D/1') and its communication (Annexure 'G/1') by way of a writ of *certiorari* under Articles 226/227 of the Constitution. Apart from other grounds, some allegations of *mala fides* were *inter alia* suggested against the Vice-Chancellor and the members of the Syndicate. However, since these were later unreservedly withdrawn by the respondent-petitioner, any reference to them has now become unncessary. The matter came up before Gujral, J. in April 1974, and, after full-dress arguments had been addressed for one week, the learned counsel for the appellant-University very fairly offered that in case the petitioner was aggrieved in any manner, he was willing, without prejudice to have the matter placed against for review and reconsideration by the Syndicate. This was in terms accepted on behalf of the petitioner-respondent. Accordingly, Gujral, J., recorded the following order on April 23, 1974 :—

> "Shri Kuldip Singh appearing on behalf of the Guru Nanak University and the Vice-Chancellor states that the Vice-Chancellor is agreed to place the matter before the Syndicate again for a reconsideration of the case of the petitioner. In view of this undertaking, the petitioner is adjourned for three months. The learned counsel for the petitioner states that she withdraws the allegations of *mala fides* that have been levelled in the petition against the Vice-Chancellor and the members of the Syndicate. The petition to come up for hearing on 2nd August 1974."

In compliance with the above, the appellant-University invited the petitioner-respondent to make any representation etc., to set out her case. This she accordingly did,—*vide* a detailed communication dated July 5, 1974. The University forwarded to each member of the Syndicate a copy of the representation submitted by the petitioner-respondent and annexed thereto was a very brief note Annexure 'X-1' relating to the case of the petitioner-respondent, which included para-wise comments on her abovesaid representation. Alongwith these documents, a copy of the civil writ filed by the petitioner-respondent was attached as also a communication addressed by the learned counsel for the appellant-University.

(9) The case of the petitioner-respondent came up for consideration at item No. 20 in the agenda of the Syndicate meeting held on October 13, 1974. It deserves mention that meanwhile substantial and significant changes in the personnel of the Syndicate had taken place between its earlier meeting on June 16, 1973 and the one held a year and 4 months later. The matter was considered afresh by the members of the Syndicate and, after due deliberation, the earlier decision was in terms adhered to. After this decision, the writ petition was again placed before Gujral, J., but as his Lordship and meanwhile been appointed a member of the Senate of the Appellant-University, he declined to adjudicate thereon. The case was thereafter placed before the learned Single Judge who ultimately decided the same. However, to complete the chequered history of the case, it has to be mentioned that on behalf of the petitioner-respondent Civil Miscellaneous No. 9110 of 1974 was again moved praying *inter alia* that the allegations of *mala fide* levelled against the Vice-Chancellor as also against the other members of the Syndicate be allowed to be reagitated. This request was categorically rejected by the order dated January 29, 1975 in which it was noticed that since the same had been un-reservedly withdrawn on April 23, 1974, the same could not again be allowed to be resuscitated. Apart from this, in the concluding part of the order, the following was also recorded :—

> "In view of the refusal of the first prayer regarding reagitating the allegations of malice, counsel for the petitioner prays that he may be allowed to delete the Vice-Chancellor, respondent No. 2, from the array of respondents since there is nothing more to be agitated against him. Accordingly the name of Vice-Chancellor is deleted from

the array of respondents. With these observations, the application is disposed of with costs. Counsel's fee Rs. 200."

The learned Single Judge,—*vide* his order dated March 4, 1975, has allowed the writ petition with costs and quashed the orders Annexures 'D/1' and 'G/1' with the further direction that the petitioner shall be deemed to be in continuous service of the University as if no order terminating her services was passed. The Guru Nanak University appeals.

(10) An analysis of the judgment of the learned Single Judge would show that the two central findings arrived at are firstly that statute 31(2) of the Guru Nanak University has not been complied with and secondly that the said provision is of mandatory nature. It has also been found that the impugned resolution of the Syndicate and the communication of the same to the petitioner-respondent had cast a stigma on her which would necessitate the giving of reasonable opportunity to her before arriving at such a conclusion. He further found that the documents Annexure 'R-1/1' and Annexure 'R-2/2' primarily relied upon by the University were forged ones which had been manufactured afterwards to buttress its case.

(11) The abovesaid findings have been forcefully and plausibly assailed on behalf of the appellant-University. However, before we proceed to examine the rival contentions in their proper context, we wish to pointedly highlight the fact that within this Court, the Division Bench judgment in *Jaswinder Singh Toor* v. *The Punjab Agricultural University, Ludhiana* (1) still holds the field. Its unequivocal *ratio decidendi* is that the statutes framed under the University Act laying down the terms and conditions of the employees of a University do not have the status of statutory rules and, therefore, do not provide any statutory protection to its employees with the result that the matter of employment becomes one of pure contract of personal service and at its highest the breach thereof may give rise to a claim for damages. The correctness of *Jaswinder Singh's case* (supra) has not been challenged before us by either side. Mr. Kuldip Singh, learned counsel for the appellant-University, has chosen to argue the case of the appellant on the premises that even assuming for arguments sake that statute 31 of the Guru Nanak University has statutory force, even then the case of the

(1) 1972 S.L.R. 198.

petitioner-respondent is without merit and the findings of the learned Single Judge arrived at are unsustainable. We have, therefore, proceeded to examine the matter on the assumption that the statutes of the Guru Nanak University have the force of law (i.e., in favour of the petitioner-respondent), but as we agree with the contentions of the learned counsel for the appellant-University, we do not choose to express any academic opinion whatsoever on the ratio of *Jaswinder Singh's case* (supra).

(12) It deserves recollection that the core of the defence taken up by the appellant-University to the writ petition moved by the petitioner-respondent was that the case of her confirmation was first initiated in the Establishment Branch of the University and was thereafter duly processed through the normal official channels right up to the Vice-Chancellor. The record of these proceedings was Annexure R-1/1 containing the initiation of the case by the office and the relevant notings from the Assistant Registrar of the University up to the Vice-Chancellor thereof. Equally it was the appellant-University's case that an informal meetings of the Executive Board of its Women's Sports Committee was held and its report was duly forwarded by its President Mrs. J. K. Grewal to the Vice-Chancellor,—*vide* Annexure R-2/2 and agreeing therewith the Vice-Chancellor based his recommendation to the Syndicate. In the meeting of the Syndicate held on June 16, 1973, the Vice-Chancellor read out the report of the President of the Women's Sports Committee.

(13) Now a reference to the judgment under appeal makes it manifest that the learned Single Judge in arriving at his finding that statute 31(2) had not been complied with was primarily and deeply influenced by his rejection of the very factual basis of the appellant-University's case and his firm conclusion that two of its material documents Annexures R-1/1 and R-2/2 were of a sprious nature. After discussion, the learned Single Judge has concluded this matter in the following unequivocal terms :—

> "As such the authenticity of these documents (Annexures R-1/1 and R-2/2) is doubtful and it appears that the same were prepared afterwards."

(14) With the greatest respect, we are of the view that the above said finding stems from an apparent misconception about the

scope and nature of the jurisdiction in a writ of *certiorari*. It needs no great erudition to see that this jurisdiction is normally confined to facts alleged and admitted on affidavits or those not seriously traversed on the record. As is well known, it is an extraordinary remedy resorted to when the basic factual position is not in dispute. It has to be borne in mind that the writ jurisdiction is not and cannot be made a substitute for a regular trial by way of a suit for determination of contentious matters in which the parties are diametrically opposed on material facts. This indeed is a reason for dealing to exercise the discretionary writ jurisdiction in cases where intricate and disputed questions of facts are raised unless of course as a very exceptional measure, the writ Court itself proceeds to record evidence and then arrives at a finding thereon. Apart from the fact that this is rare and is indeed resorted to for very special reasons, it is elementary that the Court would then allow the parties the right of leading evidence, production and cross-examination of witnesses and the rebuttal thereof in order to arrive at a considered finding of fact.

(15) A Division Bench in *Dattatraya Manqure* v. *The Government of Hyderabad* (2) has rightly opined that unless the above-mentioned safeguards are adhered to, it would be indeed unfair and risky to determine intricate and disputed facts in a summary manner on a affidavits alone within the extraordinary writ jurisdiction. We are inclined to agree entirely with this view. The present case, to our mind, illustrates both the risk and the unfairness involved in violating the salutary rule. Admittedly in the present case, no evidence was led, and even the originals of Annexures R-1/1 and R-2/2 were neither produced nor their executants examined nor any formal issue was struck. Annexure R-1/1 was an authenticated copy of the record of the University maintained in its ordinary course of business and apart from other matters bore the noting and signatures of the Assistant Registrar. Shri Parkash Singh, Deputy Registrar Shri Iqbal Singh, the Registrar Shri Bharpur Singh, and of the Vice-Chancellor Shri Bishan Singh Samundri. Similarly Annexure R-2/2 was a document issued under the signatures of Mrs. J. K. Grewal, the President of the Guru Nanak Women's Sports Committee and was supported by as many as six affidavits of respectable academicians who swore that they had duly participated in a meeting called by the President and had sincerely and objectively opined that the work and conduct of the petitioner-respondent were not satisfactory. In such a situation, the risk of arriving at a finding, on mere affidavits, by the High Court itself that a document is

(2) A.I.R. 1954 Hydrabad 203.

forged and manufactured, is indeed so manifest that it does not require any great elaboration. Equally such a finding regarding a document which has been subscribed to as authentic by very respectable persons who are parties thereto or are executants thereof would amount to a trial *in absentia* of these persons and would be tantamount to a finding of Criminal forgery against them without even affording them the least opportunity to show otherwise. This is a result which appears to us to be contrary to the very elements of the system of Jurisprudence which we administer. It appears to us that unless as an exceptional measure, the issue of fact was in terms put to trial and the parties allowed the rights of leading evidence etc., with all the trappings of a fair trial, a finding about Annexure R-1/1 and R-2/2 being forged, could not be arrived at within the extraordinary jurisdiction of a writ of *certiorari.*

(16) The matter appears to us to be so plain that it need not be supporaed by a mass of authorities. Nevertheless, there are not lackig and a reference to a few of them would suffice. Ferris in his authoritative work. The Law of Extraordinary Legal Remedies, has this to opine about the nature of a writ of *certiorari* : —

> "The scope of the review is never extended to the merits. The action of the inferior body is final and conclusive on every question except jurisdiction or power. The trial is not *de novo*, nor by jury. The only questions presented are questions of law arising and apparent on the record. Errors not assigned below are not, of course, considered, *and though the record be incorrect, it cannot be impeached. Certiorari* is not a flexible remedy, and is inadequate to either raise or dispose of questions of fact. Such questions are not considered. Nor is it generally admissible to hear or consider, or weigh the sufficiency or preponderance. of the evidence."

Nearer home there are binding precedents of their Lordships of the Supreme Court extending now for nearly two decades. In the celebrated case of *Hari Vishnu Kamath* v. *Syed Ahmad Ishaque* (3) their Lordships whilst summarising the scope of the writ jurisdiction observed :—

> "The Court issuing a writ of 'certiorari' acts in exercise of a supervisory and not appellate jurisdiction. One conequence of this is that the Court will not review findings

(3) A.I.R. 1955 S.C. 233.

of fact reached by the inferior Court or Tribunal, even if they be erroneous."

The above view was elaborated and reiterated in *Nagendra Nath Bora and another* v. *Commissioner of Hills Division* (4) with the following observations :—

> "So far as we know, it has never been contended before this Court that an error of fact, even though apparent on the face of the record, could be a ground for interference by the Court exercising its writ jurisdiction. No ruling was brought to our notice in support of the proposition that the Court exercising its powers under Article 226 of the Constitution, could quash an order of an inferior tribunal, on the ground of a mistake of fact apparent on the face of the record."

In *Shri Ambica Mills Co., Ltd.* v. *Shri S. B. Bhatt and S. B. Bhatt and another* (5), Gajendragadkar, J., (as his Lordship then was), speaking for the Court again concluded in paragraph 8 as follows :—

> "There is no doubt that it is only errors of law which are apparent on the face of the record that can be corrected, and errors of fact, though they may be apparent on the face of the record, cannot be corrected."

(17) Again their Lordships of the Supreme Court have repeatedly dilated on the undersirability of deciding contentious matters on which the parties are at variance. In *Union of India* v. *T. R. Verma* (6) speaking for the Court observed in paragraph (6) as follows :—

> "That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit."

(4) A.I.R. 1958 S.C. 398
(5) A.I.R. 1961 S.C. 970.
(6) A.I.R. 1957 S.C. 882

An identical view has also been expressed in *Shri Sohan Lal* v. *Union of India and another* (7), in paragraph 3 of the report and reiterated in *The Union of India and others* v. *Ghaus Mohammad* (8) Indeed the legal position is so well-settled that even Mr. B. Singh, learned counsel for the petitioner-respondent fairly conceded that a finding of virtual forgery in the writ jurisdictio was at least patently unusual, if not impossible, to be arrived at.

(18) Apart from the fact that the finding of the learned Single Judge regarding Annexure R-1/1 and R-2/2 could not possibly be arrived at in the writ jurisdiction for the reasons enumerated above, with respect, we feel compelled to disagree entirely with the view of the learned Single Judge about these documents on examination of the facts and merits of the case here. Adverting first to Annexure R-1/1, we notice that this is an extract from the Establishment Branch of the Univearsity's record maintained in its ordinary course of business. It originates with the office noting in the said Branch regarding the confirmation case of the petitioner-respondent under the signatures of one Shri Jagjit Singh Gill on March 29, 1973. The relevant document was placed before the Assistant Registrar, Shri Parkash Singh, who affixed his signatures in approval thereon on April 2, 1973. In forwarding the papers to the Deputy Registrar, the matter was duly diarised and in the margin the diary No. 8170/R. dated 3rd April, 1973, duly appears. These papers were then placed before the Deputy Registrar Shri Iqbal Singh, who recorded a short independent note suggesting that the opinion of the President of the Women's Sports Committee may be confidentially obtained about the work and conduct of the petitioner-respondent. Shri Iqbal Singh signed the abovesaid note on April 3, 1973, and the relevant diary No. for forwarding the same to the higher authorities is again noticed in the margin as $\frac{536/DR}{3/4}$. The papers were then placed before the Registrar Shri Bharpur Singh, who again apparently in his own hand recorded a note in Punjabi to the effect that though the Vice-Chancellor was himself competent to opine about the work and conduct of the respondent, yet if he so desired, he could call for the report as suggested by the Deputy Registrar. The Registrar signed the note on April 5, 1973 and after being duly diarised under No. 1224/VC, dated April 5, 1973 (duly noted in the margin), the papers were placed before the Vice-Chancellor who on that very

(7) A.I.R. 1957 S.C. 529.

(8) A.I.R. 1961 S.C. 1526.

date accorded formal approval to the suggestion under his own signatures.

(19) Learned counsel for the appellant-University was very fairly keen to place all the original record pertaining to Annexure R-1/1 before us for persual. We examined the same with the keenest eye in view of the finding arrived at by the learned Single Judge. All these documents indeed bore the hall-mark of authenticity around them and there was not a hint of any alternation, manipulation or overwriting therein and equally the relevant entries in the daily diary bearing the relevant numbers regarding the movement of the papers in the normal course of business. With respect, we are unable to see how it would be possible to persuade all the aforementioned persons who, apart from the other facts, are signatories to Annexure R-1/1 to join in a conspiracy to forge the said document after the filing of the writ petition or may be earlier (because the finding of the learned Single Judge is far from clear about the alleged time of forgery or the precise author or authors thereof). We are equally unable to see any great gain to the respectable officers of the appellant-University for indulging in manufacturing this document or to attribute to them such ingenuity and perfection that the fabricated document should fit perfectly into the authentic record and the daily diaries maintained by the University in the normal conduct of its work. It is stated at the bar that the learned Single Judge did not even have the advantage of looking at that original record before he proceeded to record the above finding which with respect has, therefore, to be effected for the reasons above noticed. We, therefore, conclude that Annexure R-1/1 is authentic and there was hardly any ground to view and appraise the same with an uncalled for aura of suspicion.

(20) What has been said regarding Annexure R-1/1 applies with equal and singular aptness to Annexure R-2/2 as well. This document is indeed a continuation and complies with the former document, and if the earlier is authentic, then that fact lends substantial assurance to the veracity of the contents of Annexure R-2/2 as well. The document records the fact that a meeting of the Executive Board of the Women's Sports Committee was held on April 29 in the Lyallpur Khalsa College for Women, Jullundur, to discuss the confirmation case of the petintioner-respondent. It was attended by Mrs. J. K. Grewal, President, Miss K. Pasricha, Vice-President, Miss S. K, Avtar Singh, Miss V. Anand, Mrs. Sethi and Mrs. L. Nath. It further records that the abovesaid persons were unanimously of

the opinion that in view of her work and conduct, the petitioner-respondent was not capable of holding the administrative post assigned to her on probation and, therefore, no extension be granted to her. This document is signed by Mrs. J. K. Grewal, who admittedly is the President of the Committee and was duly forwarded by her to the Vice-Chancellor of the Appellant-University who in his affidavit categorically claims that he received the same and agreed with the report of Mrs. J. K. Grewal. Not only that, this document was placed before the Syndicate on June 16, 1973 and in the admitted recorded and relevant proceedings on that date contained in Annexure D-1 (produced by the petitioner-respondent herself and the authenticity of the document is hardly in doubt), the following finds express mention :—

> "The Vice-Chancellor read out the recommendations of the Executive Board Sports Committee (Women) pertaining to confirmation of Dr. (Mrs.) I K. Sandhu.'

The above makes more than manifest that at least on June 16, 1973, there was the report Annexure R-2/2 which was duly read out in the meeting of the Syndicate. This adequately and sufficiently negatives the theory that the document was fabricated later. Because if it was so, there could hardly be any reference to it in the proceedings of the Syndicate contained in Annexure 'D-1. Apart from the above substantial and almost conclusive corroboration to Annexure R-2/2 is provided by the affidavits filed by virtually all the respectable women educationists who had attended the meeting of the Executive Board. Mrs. J. K. Grewal has filed two affidavits in support of its authenticity and elaborated all the surrounding facts in the context of which the meeting was held and the opinions of the members obtained. In passing, it deserves mention that Mrs. J. K. Grewal apart from being the President also holds the office of the Principal, Government College for Women, at Patiala. She is more than amply supported by affidavits, placed on record, Miss K. Pasricha, Principal, Kanya Maha Vidyalaya, Jullundur, Miss. V. Anand, Principal, Hans Raj Mahila Maha Vidhalaya. Jullundur, Miss S. K. Avtar Singh, Principal Lyalpur Khalsa College for Women. Jullundur, Mrs. L. B. Nath, Principal Ramgarhia College of Education, Phagwara and Mrs. R. L. Sethi, Principal, D.A.V. College of Education for Women, Amritsar. The affidavits of all these very respectable persons are unanimous and categorical about the meeting attended by them on April 29, 1973 under the Presidentship of

Mrs. J. K. Grewal and the unanimous opinion rendered by them about the work and conduct of the petitioner-respondent on that date. We do not see the least reason to either view the above said affidavits with any suspicion or to draw any inference other than the one that Annexure R-2/2 is a document which appears to us as wholly authentic.

(21) The learned Single Judge appears to have been erroneously influenced partly by two wholly innocuous factors whilst appraising Annexure R-2/2. One of them was that the petitioner-respondent was an ex-officio Secretary of the Women's Sports Committee and in that capacity she had not convened any formal meeting of the Women's Sports Committee for April 29, 1973 and had not attended the same. This has been more than amply explained on the record. The Vice-Chancellor's affidavit makes it amply clear that he was the Controlling Officer of the petitioner-respondent and, therefore completely competent to opine on her work and conduct. Nevertheless, as a matter of abundant caution, he wished to arm himself with the opinion of the President of the Women's Sports Committee who in turn thought it desirable to associate the other members of the Executive Board of the Committee. The meeting convened by the President, therefore, was an informal one in view of the *ad hoc* advice sought by the Vice-Chancellor from the President of the Committee. Again, since the object of the meeting was to opine about the work and conduct of the petitioner-respondent, it was equally inapt that she should be associated with the same or that she be called to convene a meeting for the said purpose. In any case, on a reference confidentially made by the Vice-Chancellor, Mrs. J. K. Grewal rightly and expediently convened a meeting of the Executive Board herself to opine about the work and conduct of the petitioner-respondent without associating the latter with the same. We see nothing in this innocuous fact which can lead to an inference that, in fact, no such meeting was held or that Annexure R-2/2 was forged and manufactured later.

(22) The other factor which also entered the learned Single Judge's mind is the fact that in early May 1973, the Vice-Chancellor had refixed the starting salary of the petitioner-respondent at Rs. 640 and, therefore, an inference flowed therefrom that her work and conduct were amply satisfactory from which again a remote inference was sought to be drawn in order to cloud the authenticity of Annexure R-2/2. Viewed in the proper context, the fixation of starting salary at Rs. 640 p.m. in May 1973 is entirely removed from

the issue of the assessment of the work and conduct of the petitioner-respondent. Paragraph 17 of the Vice-Chancellor's affidavit dated February 18, 1974 puts the matter beyond any doubt. It is pointed out therein that in fact after joining in July 1972, the petitioner-respondent submitted an application in August, 1972, recommended by Mrs. J. K. Grewal, in which she prayed that in the post she was holding in the Delhi University, she was due for the next annual increment of Rs. 40 on September 20, 1972. It was pointed out that if the petitioner-respondent had continued in the Delhi-University, she would have secured that increment and might have drawn Rs. 640 on that date and on these premises she prayed that her basic pay be re-fixed at Rs. 640 taking into account the abovesaid factor in order to protect her pay. The matter continued to be processed in the office of the appellant-University and ultimately a recommendatory note in the following terms was made :—

> "Had she stayed at the Delhi University, she would have earned her annual increment on September 20, 1972."

The office further recommended that according to the prevailing practice in the University, the petitioner-respondent's pay which she would have drawn in her original assignment, may be protected and her basic salary be fixed at Rs. 640 from the date of her joining the University. The Vice-Chancellor had agreed with the above note later in May 1973. It is thus manifest that the additional pay of Rs. 40 had no relevance to any assessment of work and conduct but was entirely related to her claim for higher pay on the basis of an increment she was likely to earn in her previous job in the Delhi University.

(23) In this very context we must notice that though the learned counsel for the petitioner-respondent seems to have argued before the learned Single Judge that annexure R-2/2 was fabricated subsequently yet in the initial pleadings we do not find any factual basis laid for such an argument far from there being any categorical assertion to that effect. Indeed the equivocal pleadings in the writ petition patently tended to suggest that there was a meeting called and report made by Mrs. J. K. Grewal and all that seemed to be challenged was the regularity of those proceedings. Particular reference in this context may be made to para 21 of the writ petition. Therein it was vacillatingly stated that if at all some members of the Executive Board of the Women's Sports Committee assembled

somewhere then its intimation was not sent to all the members and that all members were not present therein. Further it was alleged that whatever might have been sent as recommendations of the Board could at the most be termed as the personal view of individual member or members and were not to be termed as the recommendations of the Executive Board. The overall impression from these averments obviously is that the petitioner-respondent virtually admitted the holding of a meeting but was doubtful about the regularity or the legality thereof. This has to be viewed in the context of the fact that in annexure D. 1, the relevant record of the proceedings of the Syndicate's meeting of the 16th of June, 1973, there is specific mention about the recommendation of the Executive Board of the Women's Sports Committee.

(24) Again even at the stage of the rejoinder affidavit filed by the respondent on the 6th of March, 1974, she virtually admitted the fact of a report having been sent by the President of the Women's Sports Committee Mrs. J. K. Grewal to the Vice-Chancellor which was placed before the Syndicate. Reference in this context may be made to paras 19 and 20 of this rejoinder affidavit wherein a grouse was made that the Syndicate had acted on the recommendations in the resolution of the Executive Board of the Guru Nanak University Women's Sports Committee. These pleadings would indeed tend to show that in the averments made in the writ petition and even at the stage of the rejoinder on the 6th of March, 1974, it was hardly the petitioner's case that annexure R.2/2 was subsequently created. It was only much later that as a plea of desperation it was suggested as a counter-blast that these documents had been manufactured. Even the learned Single Judge had noticed that it was only later in a subsequent rejoinder that the genuineness of annexures R.1/1 and R. 2/2 was assailed by the petitioner. It appears to us that the learned Single Judge has hence arrived at a finding beyond the initial and substantial pleadings of the petitioner-respondent herself and accepted a version which was a mere after thought or at best an empty counter-blast to the firm case set up by the appellant-University.

(25) We are compelled to conclude that the learned Judge's adverse findings about the authenticity of Annexures R-1/1 and R-2/2 are unsustainable and they are consequently reversed.

(26) As already noticed, the learned Single Judge had first concluded that there had been no compliance with the provisions of statute 31(2) of the Guru Nanak University Calender. It is more

than manifest that this finding was squarely rested on the foundation of annexures R.1/1 and R.2/2 being spurious and the consequent rejection of the factual basis of the appellant-University's defence. Once the finding about the above-said two documents etc is reversed, then the very corner-stone is eroded and, therefore, the super-structure of the finding of non-compliance with statute 31(2) necessarily crumbles.

(27) The moment it is held that Annexures R-1/1 and R-2/2 are authentic, then it is equally apparent that there has been substantial compliance with the provisions of statute 31(2) by the appellant-University in the matter of the petitioner-respondent's confirmation. The respondent-petitioner had joined service on July 22, 1972, and her period of probation was hence due to expire on July 21, 1973. Reference to Annexure R-1/1 would show that 4 months prior to that the matter of her confirmation was duly initiated in the office and by April 5, 1973, the Vice-Chancellor had called for the report of the President of the Women Sports Committee which was forwarded to him vide Annexure R-2/2 on May 2, 1973. The Vice-Chancellor patently agreed with that recommendation and as has been sworn to by him in his affidavit, he based his recommendation on the said report and in the meeting of the Syndicate on June 16, 1973, he read out Annexure R-2/2 and commended the same for acceptance. Annexure D. 1, the relevant record of the proceedings of the Syndicate would show that S. Joginder Singh, Secretary to Government, Punjab, Education Department, made certain enquiries which were replied to by the Vice-Chancellor whereafter a discussion on the subject ensued. The fourteen syndics present, which included eminent educationists, the then sitting Chief Justice of the High Court, Shri Surjit Singh Majithia, a former Minister of the Central Cabinet, the Vice-Chancellor, the Registrar and others, then unanimously resolved that the petitioner-respondent's work and conduct were not satisfactory and she should neither be confirmed in the post nor her probationary period be extended. It was further resolved that one month's notice in accordance with the terms of appointment be given to the petitioner-respondent and in lieu thereof she be paid one month's salary.

(28) Reference to section 10 sub-clause (5) of the Guru Nanak University Act would show that the Vice-Chancellor falls fully and clearly within the ambit of the term Controlling Officer as regards the petitioner-respondent. Indeed this fact is not even disputed on

behalf of the petitioner-respondent. The Vice-Chancellor was, therefore, entitled to report or opine upon the work and conduct of the petitioner-respondent and apart from his office establishment, he was personally seized of the matter by April 5, 1973 which was well within the prescribed time of three months before the expiry of the period of probation. The Vice-Chancellor was competent to personally opine and report regarding the work and conduct of the petitioner-respondent but he rather fairly sought independent advice from persons equally and more directly concerned with the work and conduct of the petitioner-respondent, namely, the Women Sports Committee of the Guru Nanak University. In this context, some excusable delay obviously took place and it was only on May 2, 1973, that Mrs. J. K. Grewal made the relevant report which is only a little less than the three months which was the statutory requirement. The Vice-Chancellor adopted and agreed with the said report, as has already been noticed earlier from the relevant parts of his affidavit, and moved for its acceptance by the appointing authority which admittedly is the Syndicate which consisted of a number of eminent members drawn from all walks of life within the State who attended the relevant meeting on June 16, 1973. It is, therefore, evident that apart from some marginal and if we may say a technical delay of a few days, there was patent and substantial compliance with the provisions of sub-clause (2) of statute 31. With respect, we disagree with the finding of the learned Single Judge to the contrary and hereby reverse the same.

(29) We may now proceed to examine the core of the matter whether the relevant provisions of statute 31(2) are mandatory or directory in nature. It hence becomes necessary to first set down the relevant statute :—

> "31. (2) The Head of Department or Controlling Officer of an employee shall send to the appointing authority at least three months before the date of the expiry of the probationary period a report about the work and conduct of the employee, appointed on probation with a definite recommendation for his confirmation in the service or otherwise."

In construing the abovesaid provision, it is indeed elementary to notice that it has to be interpreted in the context of the four clauses of this statute 31 and the construction to be placed on this particular provision must be harmonious with at least the other sub-clauses

thereof, and equally in conformity with the underlying object and intention of the whole provision. We may also remind ourselves that mere use of imperative language like the word 'shall' is indeed not conclusive because it is now well-established that an enactment in form mandatory might in substance be directory. The various rules laid down for determining when a statute might be considered as mandatory or directory are indeed only aids for ascertaining the true intention of the framers thereof which is the crucial determining factor and the same must ultimately depend on its peculiar context (*See H. V. Kamath's case supra*). It has to be borne in mind that statute 31 is, what is conveniently styled as subordinate or delegated legislation by the prescribed University's bodies under the powers conferred on them by section 19 of the Guru Nanak University Act. Even a plain look at the language of sub-clause (2) of statute 31 would show that it is essentially a procedural provision and it is trite learning that a mere infraction of a procedural provision is not necessarily fatal unless the statute prescribes to the contrary in unequivocal terms. Lastly, we recall the elementary maxim that where two constructions of a statutory provision are possible, then that one is to be preferred which is designed to effectuate its particular purpose or requirement and not the other which may tend to thwart and negative the intent and the object which was sought to be achieved.

(30) A bird's eye-view of the whole of statute 31 would show that it broadly provides for the appointment on probation of the University's employees and the procedural modes leading to either their confirmation or termination of their services. Sub-clause (1) thereof lays down that all employees on their (with classified exceptions) first appointment to the service of the University would ordinarily remain on probation for a period of one year which may be extended or reduced by the competent authority. Sub-clause (2) provides for the sending of a report with a recommendation for confirmation in service or otherwise by the Head of the Department or the Controlling Officer of the probationer at least three months before the date of the expiry of the probationary period. It is then provided by the succeeding clause that the appointing authority, if it is not wholly satisfied with the work and conduct of the employee, may either extend the period of probation not exceeding the maximum of three years or revert him to his former post and lastly may dispense with his services. It is in turn provided that in the last contingency of dispensing with the service of the employee, it

would not be necessary to serve any notice upon him. The last clause (4) provides for the confirmation of an employee if the period of probation is satisfactory.

(31) Now the dominent object and purpose of statute 31 patently is to provide a procedure for a sound assessment of the work and conduct of a probationer in order to enable the appointing authority to either confirm him therein or in the alternative to extend the period of probation or to dispense with his services. To effectuate that purpose, sub-clause (2) with which we are primarily concerned prescribes the normal mode and manner of assessing and appreciating the work of the probationer through the instrumentality of his Head of Department or the Controlling Officer. The twin provision in this context is the sending of a report by the latter with a recommendation for confirmation or otherwise with a further prescription that the same should at least be done three months before the date of the expiry of probation.

(32) Mr. Kuldip Singh, learned counsel for the appellant, has forthrightly contended with force and plausibility that the sending of the report by the Controlling Officer (or the Head of the Department) is not the be-all and the end-all of the provision. Counsel cited an example of a case in which a probationer in the very initial months of his probation committed a notorious and blatant act of criminal misconduct in relation to his employment. It was forcefully contended that in such a situation the appointing authority if satisfied would be obviously entitled to dispense with the services of the probationer on the basis of his grave misconduct irrespective of the submission or receipt of a report by the Head of the Department or the Controlling Officer. The sending of the report, therefore, has been rightly termed by the learned counsel as a mere procedural mode for conveying information to the appointing authority about the work and conduct of the employee but it is certainly not a matter which is of such a great and absolute significance that no action can be taken by the appointing authority in the absence of the report even though the matter may be glaringly in the knowledge of the appointing authority on its own. It is also pointed out by the learned counsel for the appellant that supposing an adamant Head of the Department or the Controlling Officer refuses to submit a report regarding the probationer-employee under him within the prescribed period and thereby allows him to complete

his period of probation, then would the necessary result be that the appointing authority may be robbed of its power to take consequential action under sub-clause (3) of Statute 31 because of the absence of the report. The answer must obviously be in the negative. Indeed this analogy is very apt in the present context because the petitioner-respondent had laid a claim that her husband Dr. M. S. Sandhu was her Head of the Department (which, however, was strenuously denied by the appellant-University on the patent ground that the men and the women's wings of the Sports Department of the University were patently separate and distinct), and if it were so and he was not to submit a report at all or not within the prescribed time, then could it follow necessarily that the Syndicate and the official of the University would be thwarted from taking any action in view of the intransigence of the supposed Head of the Department? An interpretation, therefore, which may hold that the sending of the report is mandatory to the extent that the same would vitiate an action in its absence, would result in an anomalous and rather startling situation. In the recent judgment of their Lordships of the Supreme Court in *Hari Singh Mann* v. *State of Punjab and others* (9), it has been reiterated that the power and the right of the employer to judge about the fitness for work or suitability for the post is inherent and he cannot be robbed thereof. Therefore, a construction which tends to rob the employer of his basic right to assess the work and conduct of the probationer by all means and if not satisfied therewith then to refuse to confirm him in the post has to be avoided because it would manifestly defeat the very purpose and object of the whole of statute 31. As we have noticed earlier, an adamant or negligent Head of Department or Controlling Officer may by his intransigence or negligence set at naught the right of the appointing authority to assess the work of the probationer by refusing to submit a report. We, therefore, find no choice but to hold that the provision of sending a report with the necessary recommendation is nothing more than a procedural provision which is normally to be followed and complied with, but cannot be held to be sacrosanct that the absence of a report would either vitiate the action of the employer or become a total fetter on his right to confirm the probationer or otherwise. This provision, therefore, must be held to be procedural in content, framed for the primary

(9) 1974 (2) S.L.R. 696.

benefit of the appointing authority in order to provide it with a convenient and easy mode of assessing the work of its employees but certainly not a provision which is mandatory. We, therefore, hold that the same is of a patently directory nature and any infringement of the same would not in any way go to the root of the matter so as to vitiate the action of the employer under Sub-clauses (3) and (4) which in terms in his basic right to confirm or dispense with the services of a probationer depending upon the nature of his work and conduct during the relevant period.

(33) What has been said above with regard to the report itself applies indeed with greater force in the context of the prescribed period for the despatch thereof. Indeed if the very sending of the report is merely directory in nature, then it follows necessarily that the prescribed period for doing so cannot be mandatory and has necessarily to be construed as directory. This apart, the statute talks of a report at least three months before the date of the expiry of the probationary period and that is apparently to provide a convenient and reasonable amount of time to the employer for arriving at a decision by the time when the employee's period of probation is liable to come to an end. There is, however, no magic in the provision of these 90 days or more. The identical examples which have been adverted to earlier apply with equal aptness in this context. If the Controlling Officer or the Head of the Department either due to negligence or because of intransigence, or even due to an ulterior motive does not choose to forward the report within the prescribed period of three months, then should it follow that this infraction or default by him may result in taking away the employer's basic right of assessing the work of the probationer and taking consequential action therefor. We are clearly inclined to take a contrary view. It has been rightly contended that statute 31 sub-clause (1) gives the employer the right to assess and appreciate the work of the probationer-employee till the last day so that he may be entitled to take into consideration his work and conduct for the full period of 12 months. If the prescribed period of the report being at least three months prior to the expiry of the probation is construed as mandatory, then it would virtually result in reducing the period of probation to 9 months regarding which alone the report can be made by the Head of the Department or the Controlling Officer. Statute 31(2) does not provide for a second report or

a supplementary one. Hence a mandatory construction would run counter to the preceding provision of sub-clause (1) and would also tantamount to the taking away of the employer's basic right of watching and assessing the work of the probationer-employee till the last day of his prescribed period of probation.

(34) It is then to be noticed that statute 31(2) provides for a period of at least three months prior to the expiry of the probation for the Head of the Department to send his report and, therefore, he may well be within his rights to submit a report even in the 4th or 5th month of the probationer-employee's service. As already noticed, the statute does not in terms provide for a second and supplementary report. Would such a hasty action of the Head of the Department then hedge-down the appointing authority to consider and assess the probationer only on the basis of his work for 4 to 5 months only? That could hardly be the intention of the framers. Similarly, on the other hand, if the report has been prepared well within the prescribed time but a marginal delay occurs in the despatch of the same by accident or other fortuitous circumstances, then would such an unpredictable matter have the result of taking away the substantive rights of the appointing authority of appraising the probationer merely because the magic period of three months had not been complied with? Though the matter appears to be clear to us on principle, yet authority is not lacking for the proposition that unless clearly provided otherwise a provision as to time may not necessarily be of mandatory nature. In *The Remington Rand of India Ltd.* v. *The workmen* (10), their Lordships of the Supreme Court were construing the provisions of Section 17 (1) of the Industrial Disputes Act, which were equally imperative in language for prescribing that every arbitration award and every award of Labour Court shall within a period of 30 days from the date of its receipt by the appropriate Government be published in such a manner as the appropriate Government thinks fit. After adverting to authorities, it was opined as follows:—

> "Keeping the above principles in mind, we cannot but hold that a provision as to time in Section 17(1) is merely directory and not mandatory."

(10) A.I.R. 1968 S.C. 224.

For the foregoing reasons, we take the view that the provision of three months before the date of the expiry of the probationary period in the despatch of the report is clearly directory in nature and is a convenient prescription of time which may ordinarily be adhered to but the violation whereof would be of no great significance.

(35) It is then to be noticed that nowhere in the whole of Statute 31 or for that matter in any other statute has provision been made for prescribing any penalty or sanction against any Head of the Department or any employee for not sending the prescribed report and equally so for the late despatch thereof beyond the prescribed period of time. No consequence of any great significance arises from any infraction of both these provisions and that again is a reason to assume that he framers intended the same to be basically directory and hence they did not deem it necessary to provide for any penalty or punishment for the violation thereof. This indeed is one of the indicia for judgment whether the provision is mandatory or directory. This has been so held on high authority. In *State of Uttar Pradesh and others* v. *Babu Ram Upadhya,* (11), Subba Rao, J., (as his Lordship then was) speaking for the majority of the Court observed:—

> "* * *, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

The above view was noticed and reiterated in *Remington Rand of India Ltd's case* (supra) with the following observation:—

> "The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind."

(36) Lastly it is evident in construing statute 31(2) that the preparation of the report with the necessary recommendation, the

(11) A.I.R. 1961 S.C. 751.

sending thereof and the time prescribed are provisions for the benefit and advantage of the appointing authority in order to enable it adequately to discharge its function for the assessment of the work and conduct of its probationer-employees. These are patently procedural provisions for laying down a suitable norm and mode for doing so in a large organisation like the Guru Nanak University. In our view, these provisions are intended primarily for the benefit and assistance of the appointing authority and not in terms to confer any right of confirmation on the probationer-employee. This appears to be manifest that the probationer-employee at no stage is either to be given a copy of the report or to be associated therewith nor is he entitled to rely thereon. Counsel for the appellant rightly contended that nowhere in the gamut of the statutory provisions was any right conferred on the employee to either get a copy of the report or to inspect the same. These were apparently communications in confidence between the Head of the Department or the Controlling Officer and the appointing authority. It was not even remotely contended by Mr. B. Singh, learned counsel for the petitioner-respondent, that she was entitled to the copy of the report or that at any stage she was given any such copy. If a person is not entitled as of right to a document, it hardly lies in his mouth to say that he is prejudiced either by the non-despatch thereof or even by the late despatch of the same. It is particularly pertinent to note that the learned counsel for the petitioner-respondent has not been able to point out to any particular prejudice suffered by his client in this context.

(37) From the consideration of all the above-mentioned factors, it seems to be indeed the only inference that the provisions of statute 31(2) are directory in nature and are intended primarily for the benefit and use of the employer without conferring any vested right therein on the probationer-employee. Once it is held that the provisions are directory in nature then it follows that even if there has been some infraction thereof (assuming so entirely for the sake of argument), then the same can possibly be of no great significance.

(38) We now come to the twin finding of the learned Single Judge recorded in the following terms:—

> "I hold that the impugned order attaches a stigma and has resulted in penal consequences to the petitioner and that

the principles of natural justice have been violated inasmuch as the petitioner was not given any opportunity of being heard to defend herself before he passing of the impugned orders."

Both for reasons of convenience and clarity, we propose to deal separately with each of the two findings noticed above. Adverting firstly to the issue of the stigma attached to the petitioner-respondent, we notice that the only factual basis therefor rests on nothing more than the confidential proceedings of the minutes of the Syndicate recorded in (Annexure D. 1) and the conveyance of the same to her by a personal communication addressed individually to her by the Registrar *vide* Annexure G. 1. The operative part of this communication is in the followning terms:—

"After considering your case from all aspects, the Syndicate at its meeting held on 16th June, 1973 unanimously decided that as your work and conduct were not satisfactory, you be neither confirmed in the post of the Secretary Sports (Women) nor your probationary period be extended, and your services be dispensed with.

You are further informed that your services have been dispensed with, with immediate effect, and one month's salary will be paid to you in lieu of one month's notice."

Apart from general principles and the binding authorities on the subject, the matter here has to be viewed primarily in the particular context of sub-clause (3) of statute 31, which, therefore, must be set down in extenso for facility of reference:—

"If during his period of probation, the work and conduct of an employee is in the opinion of the appointing authority not satisfactory, it may dispense with his services or revert him to his former post, if any, or extend the period of probation and thereafter pass such orders as would have been passed by it on the expiry of the first period of probation provided that the total period of probation including extension, if any, shall not exceed three years if there is a permanent vacancy against which the employee can be confirmed. If it is decided to dispense with the service of any employee, it shall not be

necessary to serve a notice on the employee for the termination of his service."

With the background of the above provision, we feel compelled to remark forthrightly that we are entirely unable to agree with the learned Single Judge that the impugned order of the appellant-University attaches any stigma to the petitioner-respondent. As is evident from the plain words of sub-clause (3) above, the very *sine qua non* for dispensing with the services of the probationer is the subjective satisfaction of the appointing authority that during the probationary period, his work and conduct have not been satisfactory. If statute 31 is to be complied with in terms (which indeed is the core of the petitioner-respondent's case herself) then it appears to us that the very condition precedent for refusing to confirm a probationer has necessarily to be a finding by the appointing authority that the work and conduct of the employee have not been satisfactory. Can it be said that in complying with and in conforming to the provisions of a statute the appointing authority acts in a manner which may be called illegal or in doing so it attaches a stigma to the probationer. Far from it being so it appears to us, on the other hand, that unless the appointing authority were to arrive at such a finding and record the same and inform the employee thereof, it could well be argued on behalf of the probationer that the employer had no power to dispense with his services because there had not been strict compliance with the provisions of sub-clause (3). With respect, we are unable to see how compliance with the plain terms of a provision and following the same in letter and spirit would be something which involves stigmatisation. The performance of a legal duty laid down in terms by a statute is a matter which should neither be challengeable nor should it result in any adverse consequences to the party conforming to its statutory function.

(39) Leaving sub-clause (3) of statute 31 aside for a moment, we are equally clear that even in the absence of such a provision, it is elementary that the appointing authority when refusing to confirm an employee is bound to arrive at some negative finding regarding his work and conduct during the probationary period. Indeed, if it were of a satisfactory nature, the confirmation would obviously

follow. If a contrary decision has to be arrived at, it equally follows that a finding by the appointing authority that he is not satisfied with the work and conduct of the probationer-employee, is inevitable. Can arriving at such a finding and the conveyance thereof to the probationer be possibly deemed as a matter which is either penal or stigmatic? We are clearly of the view that it cannot be so. A refusal to record such a finding or not even conveying the same to the probationer as the reason for refusing to confirm him, would, therefore, be either bypocritical or merely a suppression of the truth. We see neither principle nor authority for the proposition that candidly conveying something so innocuous to the probationer that he has not measured up to his job, and his work and conduct, in the subjective satisfaction of the employer, has not been upto the mark, can be deemed as a matter which is punitive. Indeed binding precedents for the contrary proposition are not lacking. We deem it sufficient first to advert to the well known case of the *Union of India and others* v. *R. S. Dhaba* (12). Here the actual words used were that the officiating employee had been found unsuitable after trial to hold the post of an Income-tax Officer, Class II and, was, therefore, being reverted with immediate effect. Their Lordships categorically held that the use of this terminology and language did not imply any stigma or any penal consequences whatsoever. The above view, so far as we are aware, has fully held the field and a recent reiteration thereof is evident in *Hari Singh Mann's case* (supra) where the relevant words used in the order candidly stated that the Government had considered the employee as unfit for employment to the service. Their Lordships opined that the words 'unfit to be appointed' were indeed far from being stigmatic and further that to exclude such terminology would rob the authority of the power to judge and assess the work and suitability to the post of a probationer at the time of his confirmation. We, therefore, feel bound both by principle and by precedent to hold that the mere conveyance of something so innocuous as the opinion that the work and conduct of the probationer were not of a satisfactory nature, does not cause any stigma nor the same can be characterised as penal.

(40) Before parting with this aspect of the case, we must also notice what appears to us a rather unusual view expressed by the

(12) 1969 S.L.R. 442.

learned Single Judge that the appointing authority did not have any material before it for arriving at an adverse assessment of the petitioner-respondent's work or in the alternative the factual details as to how the work and conduct of the respondent were not satisfactory, were not marshalled and brought on the record. In the earlier part of the judgment, we have accepted the authenticity of Annexure R2/2. From this it would be evident that the opinion of as many as 6 or 7 members of the Executive Board of the Women's Sport Committee, which had directly to deal with and assess the work of the petitioner-respondent had been duly ascertained. All of them were unanimous about the fact that the work and conduct of the petitioner-respondent were not satisfactory. This was recorded in the form of a report by Mrs. J. K. Grewal and forwarded to the Vice-Chancellor. The latter in his own affidavit has clearly recorded that he agreed with that report. This apart, it has to be remembered that the Vice-Chancellor as the Controlling Officer was independently competent to opine about the work and conduct of the respondent and must be assumed to be well aware of the nature of the same. There was, hence, factually abundant material and the unequivocal opinion of as many as 7 or 8 superiors of the respondent regarding her work and conduct. Indeed, we are of the view that far from there being any lack of factual basis there was more than ample material before the appointing authority which after adequate discussion arrived at an unanimous opinion on the point.

(41) We have, however, found considerable difficulty in appreciating the view-point that because the relevant reports, etc., did not furnish all the factual details and did not specify or opine as to how the work and conduct of the respondent were not satisfactory, therefore, these reports were either meaningless or could not be acted upon. If the learned Single Judge meant to opine that for arriving at a plain assessment of the work of a probationer, the competent authority is compelled by law to marshal each and every one of the facts and incidents from which his subjective satisfaction as to the work and conduct has been derived, then we must in no uncertain terms differ and reject that view. Neither any authority nor any principle has been cited before us nor we are aware of any such proposition which requires the employer to marshal all the facts regarding the alleged unsatisfactory nature of the work and conduct of a probationer and then to arrive at a concise finding

qua each of them for holding that he is subjectively satisfied or otherwise about the work of his probationer-employee. Indeed, we take it as well-settled that the matter of the satisfaction of an employer about the work and conduct of his employee is entirely personal to the former and it is he alone who can opine about the same. It appears to us that it is not the province of the Courts to ordinarily go behind that view arrived at within the four corners of his right to do so. To our mind, it is entirely erroneous to consider the matter of the satisfaction of the employer about the work and conduct of his employee as if it were a *lis* betwixt them in which each side must marshal up his facts and arguments in *extenso* and then a speaking and rational order be recorded for holding whether the work was satisfactory or otherwise. Unless binding authority says to the contrary, we are on record to hold that satisfaction in these cases is the personal satisfaction of the employer. The learned Judge was, therefore, in error in requiring and wanting details of factual material and each instance of unsatisfactory work and conduct as a condition precedent for the employer to arrive at an overall appraisal about the work and conduct of the probationer. We are firmly of the view that it is unnecessary and even dangerous to induct any such novel or nebulous concept in a matter so essentially simple as the satisfaction or otherwise of an employer *qua* the work of his employee.

(42) In fairness to the learned counsel for the appellant, we must record the fact that he had forcefully contended that the theory of stigma and the penal consequences flowing therefrom is an emanation from the Provisions of Article 311 of the Constitution only. He contended that since the respondent did not come within the ambit of Article 311 as she was not holding a civil post under the State, therefore, the concepts of stigma, etc., were irrelevant to the present issue. Learned counsel had pointed out that in the University statutes there was no provision in *pari materia* with Article 311. Since we have come to a clear-cut finding that no stigma or penal consequences were in fact involved in the case of the respondent-petitioner, the issue becomes rather academic and we, therefore, do not propose to examine the same in depth or to pronounce thereupon.

(43) We now proceed to consider the second limb of the finding that the rules of natural justice have been violated. Rather reluctantly we have to record with respect that herein also we are of the

view which is entirely contrary to that arrived at by the learned single Judge. Firstly, it deserves notice that we have observed above in no uncertain terms that the impugned action of the university was not by way of punishment and that it did not even remotely cast any stigma on the respondent-petitioner. Once that is so, then it flows therefrom that no question of violation of the rules of natural justice would arise. It is elementary that these rules are to be invoked in instances where the action is penal in nature against some-one and an opportunity to show-cause has been denied or as is said in technical language the maxim *audi alteram partem* has been violated. If there was no penal action and no stigma cast, as we have opined above, then equally no question of giving any opportunity or a consequent infraction of the rules of natural justice would arise.

(44) Secondly, we may quote for the purposes of emphasis the last part of sub-clause (3) of statute 31 which has already been set down *in extenso* in the earlier part of the judgment :

> ". . If it is decided to dispense with the service of an employee, it shall not be necessary to serve a notice on the employee for the termination of his service."

Now it is settled law that the rules of natural justice are not embodied rules, nor can they be elevated to the position of fundamental rights. Ineed, they can be invoked only in an area where the statute is silent and general principles demand the invocation or attraction of these rules. We have said earlier that we find nothing here which would require the calling in of the rules of natural justice as the action of the appellant-University was wholly innocuous and far from being penal. However, even if remotely for the sake of argument be it assumed that it was so, then the above-quoted portion of sub-clause (3) of statute 31 expressly negatives any such requirement and provides that it would not be necessary to serve a notice on the employee if his probationary services are to be dispensed with. Indeed, the giving of any such notice would conflict with the relevant provision. It is beyond dispute that the rules of natural justice even where they come into play can be either excluded or curtailed by the express terms of a statute. We construe the above-quoted provision of sub-clause (3) of statute 31 as such a

provision. Authorities for this proposition are not lacking and instead of multiplying them, we think it sufficient to quote the following observations from the well-known case of *Union of India* v. *J. N. Sinha and another* (13)

> "But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice."

Thirdly, we may observe that no authority has been brought to our notice nor any principle cited which would require that in the case where the services of a probationer are not approved and he is not to be confirmed, then he is entitled to an opportunity to show cause against such action before doing so. Unless, of course, a statutory provision requires in mandatory terms to give such an opportunity, there is no room for importing any such right under the rules of natural justice. As we have already noticed, in the University statutes there is no such provision and, indeed sub-clause (3) of statute 31 noticed above in terms negatives the giving of any notice whatsoever. It deserves recollection that their Lordships of the Supreme Court have repeatedly laid down that a probationer has no right to continue in the post as such and cannot claim confirmation as a matter of legal right. It is only if the action of dispensing with his services is directly and patently by way of punishment that an opportunity may be claimed by him by virtue of the language of Article 311(2) in the case of public servants. The petitioner-respondent does not even fall within that category. Equally, we have held that the refusal to confirm the petitioner was not in any way by way of punishment.

(45) Last but not the least, in this context we are of the view that the petitioner-respondent is now estopped from taking any such plea and further that she had more than ample opportunity to present her case and to show cause against the termination of her services to the appointing authority. We base our opinion for this on the patent and the admitted fact that on April 23, 1974, before

(13) A.I.R. 1971 S.C. 40.

Hon'ble Mr. Justice M. S. Gujral the petitioner-respondent unreservedly accepted the fair and generous offer of the appellant-University to have the matter reconsidered and reviewed by the Syndicate afresh. That having been adequately done and the Syndicate having reiterated in terms its earlier view, it now does not lie in the mouth of the petitioner-respondent to blow hot and cold and to nullify all the proceedings that followed in view of her categorical acceptance of the offer and to go behind the same. It is not in dispute that the Syndicate when it reconsidered the matter on the 13th of October, 1974, had been reconstituted and there had been sizeable changes in the personnel of that august body. Equally, it is not in dispute that a representation was invited from the petitioner-respondent and she submitted a full and exhaustive one dated the 5th of July, 1974, copies whereof were communicated well in advance of the meeting to each member of the Syndicate for his close perusal. Not only that but para-wise comments thereon with all the relevant detailed facts, etc., were also supplied by the University. Along with these documents a copy of the writ petition filed by the petitioner-respondent in this Court, which is exhaustive to the point of being repetitive, was also sent to each Syndic and in this her case has been dealt with in the minutest detail. Along with these three documents duly circulated was a communication by the University counsel giving the whole background of the case and the order of the Court directing a fresh appraisal and decision by the Syndicate regarding the case of the petitioner-respondent. It is patent, therefore, that after all the above-said exhaustive material had been fully conveyed well in advance to each member of the Syndicate which undoubtedly includes in its fold eminent men in the State of Punjab drawn from various walks of life that the matter was reconsidered in depth by them in the light of the known orders of the High Court. Nevertheless, on a complete reappraisal and fresh consideration of the case taking into account the detailed representation of the respondent and her writ petition, etc., the Syndicate adhered to its earlier view. If ever the rules of natural justice in the peculiar situation could be satisfied (if any occasion for them arose at all), the present one appears to us as a clear case of this kind.

(46) We conclude, therefore, that the twin finding of the learned single Judge that the impugned action cast a stigma on the petitioner-respondent and that the rules of natural justice have been

violated is unsustainable on the present record and has, therefore, to be set aside.

(47) Before parting with this case, we feel that we would be failing in our duty if we omit to advert to matters which have been strenuously and almost embarrassingly pressed upon us on behalf of the appellant. The first of these is rather a curiuos finding recorded by the learned single Judge in the following terms :

> "The Syndicate did not apply its mind either at the time of passing the impugned resolution, Annexure 'D-1', or at the time of reviewing the representation of the petitioner in its meetings held on 16th June, 1973, and 13th October, 1974, and merely acted as a rubber stamp of the Vice-Chancellor."

With great humility we wish to observe that on this record we find the above-said observation as both uncharitable and, if we may say so, unfair to the distinguished personages who constitute the Syndicate of the appellant-University. They are in no way in a position of subservience to the Vice-Chancellor and there is not an iota of evidence or ground to hold that they were under his thumb in such a manner that without any application of their minds they were acting as a rubber stamp for his action. Indeed, the terms of the statutes of the appellant—University would show that the position in fact is to the contrary. The Syndics of the University are as a body in a position of superiority to the Vice-Chancellor and the executive administration of the University is vested in this body along with the control of its revenue and property as provided for by the provisions of section 14 of the Guru Nanak University Act. The Syndicate is only in a position of slight inferiority to the Senate which is the supreme authority of the University. As already noticed earlier, the members of the Syndicate are men of reasonable eminence drawn from the field of education as also from various other walks of life and professions and with a single stroke to tar them with the brush of non-application of their minds and of stark subservience to the Vice-Chancellor was, to say the least, uncalled for. The learned single Judge has not given any hint or reasons as to why he thinks that in its first meeting on June 16, 1973, the Syndicate did not apply its mind. There is documentary evidence on the record in the shape of Annexure 'DI' which clearly records in adequate details the manner in which the Syndicate considered the

case of the petitioner-respondent and came to a unanimous conclusion. We are unable to see how it was possible to infer any dereliction of duty on their part from the material on this record.

(48) The brief reasons given by the learned single Judge for the further finding that even a second time on October 13, 1974, the Syndicate was equally negligent or remiss in its duty (despite a direction of this Court to consider the matter afresh) appear to be unsustainable. As we have repeated earlier, the appellant-University has been more than careful in sending all the relevant material in connection with the petitioner-respondent's case to each one of the Syndics well in advance of the meeting on October 13, 1974. Indeed, no grouse was made before us by the learned counsel for the respondent that any meaningful material was left out of consideration. The Syndics had, therefore, more than ample time to persue and go through the relevant material forwarded to them knowing, as they did, that the matter was to be considered afresh under this Court's direction. It is the common case that the Syndicate held its meeting for full 4 hours on the 13th of October, 1974. The learned single Judge seems to be erroneously influenced by the fact that on that date the agenda comprised 157 items and has made a wholly unwarranted assumption that the time of the meeting was divided equally for each of these items and has thus arrived at the curious conclusion that only two minutes were devoted to each item including item No. 20 relating to the respondent's case. This rather unusual mode of calculation firstly excludes the fact in the categorical affidavit of the Registrar that most of these 157 items were of an entirely non-controversial nature which required mere formal approval and, therefore, did not consume any meaningful time of the Syndicate. In this background, we are unable to see how the learned Judge could assume the equal distribution of time and then infer that merely two minutes were devoted to the respondent's case despite categorical affidavits to the contrary. The observations of the learned single Judge are further oblivious of the averments in the affidavits filed on behalf of the University that in fact the petitioner-respondent's case was relegated for a fuller consideration in depth as the last item on that date. This was so because Hon'ble the Chief Justice who is a member of this Syndicate and was present in that meeting had rightly required that he would not wish to participate in the discussion of this subject because the matter was still *sub judice*. It was only after his Lordship withdrew from the

meeting after dealing with the other items on the agenda that the rest of the Syndics devoted themselves to the case of the petitioner-respondent. It has been averred on behalf of the appellant-University in the affidavit that the matter was considered at length. The relevant record thereof being a copy of the resolution No. 20 of the meeting of the Syndicate has been placed before the Court on behalf of the appellant-University. It expressly notices that the representation, dated the 5th of July, 1974, of Mrs. Sandhu was considered. It records that the Vice-Chancellor informed the members about the four material documents which had been forwarded to each one of the Syndics. It is recorded that the case of the respondent was discussed at length by the members. Further Mrs. J. K. Grewal, who was the President of the Executive Sports Committee was also invited in order to give the members a first-hand detailed information about the work and conduct of the respondent in case they wanted the same. In the course of discussion, some members wanted detailed information and, therefore, Mrs. Grewal was also called in and required to narrate the position in detail. Further discussion followed and after reconsidering the matter from all aspects it was eventually resolved by this Syndicate that the previous decision of the 16th of June, 1973 be reiterated and be adhered to. In the face of this documentary record of the proceedings to make an inference that there was no application of mind whatsoever by this Syndicate seems to us as hardly called for. The learned single Judge has also proceeded to observe that it had taken him 4 hours to go through the pleadings in the writ petition in Court and hence assumed and virtually required that the Syndicate should have devoted an equal or a larger amount of time to the case of the petitioner-respondent. This loses sight of the fact that the Syndicate is not to function and deal with the matter as if it were a Court of record like the High Court or the matter before it was *lis* requiring all the norms and trappings of a regular judicial trial. Our attention was not invited to any provision which demands that all the relevant material of each item must be read *in extenso* by the Syndics during the course of the meeting or that there existed any bar for the Syndics to have perused the said documents earlier which were forwarded to them. The above-noticed reason which seems to have peculiarly influenced the learned single Judge to arrive at the above-said finding frankly appears to us as rather unimpressive. Instead, we are inclined to feel that it is not the province and the function of this Court to lay down either the time or

the mode and manner in which autonomous and high-powered bodies like the Syndicate of the appellant-University are entitled to conduct their business in the meetings. They are equally masters of their own procedure and unless there is an infraction of the clear statutory rules in carrying out their duties and in conforming to the procedure prescribed by law, this Court would be ill-advised to render any gratuitous advice to them in their autonomous field in dealing and disposing of their business. With respect and indeed some embarrassment we feel compelled to set aside the above finding because the persons concerned would have no other forum or remedy for redress (because we are inclined to allow the Letters Patent Appeal) against the adverse and uncharitable remarks made by a Court of record.

(49) Last of all comes the matter of the observations which the learned single Judge has chosen to make against the Vice-Chancellor of the University in a language of severe castigation. In this context, what deserves highlighting is the fact that before this Court the petitioner-respondent herself had unreservedly withdrawn each single allegation of *mala fides* against the Vice-Chancellor which had been half-heartedly levelled in the beginning. This was in terms noticed in the order of Gujral, J., dated the 23rd April, 1974, which has already been quoted in full. Therefore, there was not an iota of factual material on the record which could suggest any bad faith etc. on the part of the Vice-Chancellor. Not only this, but the learned single Judge had disallowed the reagitation of *mala fides* when prayed for on behalf of the respondent after she had failed a second time before her appointing authority, the Syndicate, in its meeting of the 13th of October, 1974. When this was done, the learned counsel for the petitioner-respondent had in terms prayed that the name of the Vice-Chancellor may be struck off from the array of respondents and this prayer was fully allowed by the learned single Judge himself and recorded in his order quoted earlier. The legal result that flows therefrom is that at the time of the recording of the judgment the Vice-Chancellor personally was neither a party to the writ petition nor was there any allegation of *mala fides* or bad faith against him on the record. Apart from these glaring factors, we have above reversed the findings of the learned Single Judge which might remotely have provided some basis for the observations. The end result, therefore, is that now there is no factual foundation upon which these remarks can possibly rest and

even otherwise we are clearly of the opinion that these were rather uncharitable and indeed uncalled for. A Civil Miscellaneous Application No. 1213 of 1975 has been moved on behalf of the Vice-Chancellor under section 151 of the Civil Procedure Code seeking an expunction of the strictures passed against him.

(50) For nearly half a century or more it has been the settled law within this Court that prejudicial observations should not be made against a person who is neither a party nor a witness in the proceedings before a Court. In *Benarsi Das* v. *Crown* (14), it was observed that it would amount to a denial of justice to allow adverse reflections upon the character of such a person to stand intact in a judgment. In this Court, a Division Bench in *Sardar Lal Singh Kang* v. *The State* (15), while summing up the law, has observed that the need for caution in making strictures is even greater in the case of remarks against officials whose carrier is likely to be affected thereby. Therein it has been further held that no such remarks should be made unless they are based on legal material properly placed on the record and further an opportunity has been afforded to the person concerned to furnish an explanation thereto. The above-said authorities pertain to strictures made in criminal cases, but it appears to us that the position is indeed more so in the civil jurisdiction and particularly in the limited sphere of the writ jurisdiction which, as we have already pointed out, ordinarily proceeds on the facts admitted on affidavits. That the position is identical within the writ jurisdiction is evident from the following observation of the Letters Patent Bench in the *Commissioner of Income-tax, Punjab, Jammu and Kashmir and Chandigarh at Patiala and others* v. *Ramesh Chander and others* (16).

> "Before parting with this judgment, it may be made clear that anything said by the learned single Judge against Shri Balwant Singh, Traffic Inspector of the Punjab Police, during the course of the judgment, will be considered to be washed away for the simple reason that Shri Balwant Singh was not a party to these proceedings and it would not be appropriate to pass any strictures against him

(14) A.I.R. 1925 Lahore 392.

(15) A.I.R. 1959 Pb. 211.

(16) (1973) 75 P.L.R. 374.

without he being given any opportunity of being heard and placing his view point before the Court."

(51) In the present case we feel compelled to record that unless all the adverse observations of the learned single Judge made against the Vice-Chancellor are effaced from the record, complete justice between the parties would not be rendered. We accordingly allow Civil Misc. No. 1213 of 1975 and hold that the adverse remarks referred to therein must be deemed as if they had never been made on the record.

(52) For the afore-mentioned reasons, we allow this Letters Patent Appeal and setting aside the judgment of the learned single Judge dismiss the writ petition with costs throughout.

K. S. K.

FULL BENCH

Before R. S. Narula, C.J., P. S. Pattar and Harbans Lal, JJ,

PRITAM SINGH,—*Petitioner.*

versus

THE ASSISTANT CONTROLLER OF ESTATE DUTY, PATIALA,—

Respondent.

C.W. 4609 of 1975.
December 1, 1975.

Hindu Succession Act (*XXX of* 1956)—*Sections* 2, 4, 6 *and* 30—*Punjab agricultural custom—Whether abrogated after the coming into force of the Act—Hindus governed by such custom—Whether to be governed by Hindu Law and the provisions of the Act after the commencement of the Act—Joint Hindu Family—Whether abolished by the Act.*

Estate Duty Act (*V of* 1953)—*Section* 59(*b*)—*Wrong judicial decision—Whether constitutes "information" within the meaning of section* 59(*b*).