AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 270 of 2016

Dr. Avinash Samal S/o Late Shri Gopinath Samal, Aged About 48 Years Assistant Professor & Former Member of Executie Council, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, Chhattisgarh. **--- Petitioner**

Versus

1. State of Chhattisgarh through the Principal Secretary, Department of Law & Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, Mandir Hasod, District Raipur Chhattisgarh.

2. Hidayatullah National Law University, through Its Registrar, Post Uparwara, Naya Raipur, District : Raipur, Chhattisgarh

3. Chancellor, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, District : Raipur, Chhattisgarh

4. Vice Chancellor, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur District : Raipur, Chhattisgarh

5. Prof. Dr. Sukh Pal Singh, Vice Chancellor, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, District : Raipur, Chhattisgarh

6. Dr. Dipak Das, Associate Professor, the then Registrar in- Charge & Secretary, Executive Council, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For the applicant	:	Mr. Amrito Das, Advocate with Mr. Abhyuday Singh, Adv.
For the State/R-1	:	Mr. J.K.S. Gilda, Advocate General with Mr. Sangharsh Pandey, Dy.G.A.
For the Respondent 2 & 4	:	Mr. Sumesh Bajaj, Advocate
For respondent No.5	:	Mr. B.D. Guru, Advocate
For respondent No.6	:	Mr. Manoj Paranjpe, Advocate

DIVISION BENCH

HON'BLE SHRI JUSTICE GOUTAM BHADURI,

HON'BLE SHRI JUSTICE SANJAY AGRAWAL, JJ

CAV ORDER

(Reserved on 27.07.2018)

(Pronounced on 27.08.2018)

PER GOUTAM BHADURI, J

1. Challenge in this writ appeal is to the order dated 29.4.2016 passed by the learned single Judge in W.P(S) No.3714/2015 whereby the writ petition filed by the appellant herein was dismissed. The relief(s) sought in the petition at Para 10 are as follows:

10. RELIEF (S) SOUGHT :

10.1 It is prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ setting aside and quashing the order dated 02.12.2014 (Annexure P-1) passed by respondent no.3.

10.2 It is prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ declaring the Executive Council decision upon agenda No.4 on 06.09.2014 (Annexure P-2) to the extent it relates to the recommendation for extension of tenure of respondent No.5 as being illegal.

10.3 It is also prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ directing the Registrar to rectify the minutes of the meeting of the Executive Council held on 06.09.2014 and place the same before the Chancellor for issuance of appropriate orders."

2. Learned counsel for the appellant would submit that the primary challenge is to the extension of tenure of respondent no.5 Prof. (Dr.) Sukhpal Singh, Vice Chancellor of Hidayatullah National University of Law. It is contended that the extension of period of tenure for second time was on the basis of letter dated 02nd December 2014 issued by the Hon'ble Chancellor of Hidayatullah National University of Law (for short "HNUL"), Chhattisgarh as incomplete and wrong

facts were furnished by the University at the behest of Vice-chancellor itself.

3. The brief facts of the case as pleaded in writ petition bearing WP(S) No.3714 of 2015 are that the order dated 02.12.2014 has extended the tenure of Respondent no.5 in exercise of the power u/s 8(2) of the Hidayatullah National University of Law Chhattisgarh Act, 2003 read with statute 19 contained in the schedule to the said Act (hereinafter referred to as the "Act of 2003"). By the effect of such order dated 2nd December, 2014, the existing tenure of respondent No.5 Prof. (Dr.) Sukhpal Singh, Vice Chancellor of the University, was extended beyond his initial tenure for a further period of 5 years or until he attains the age of 70 years, whichever is earlier. It is the case of the petitioner/appellant that the National University of Law in the State of Chhattisgarh was established with an object to advance learning, teaching, research and diffusion of knowledge in the field of law and allied sciences and also cater to the needs of society for developing professional skills and to train lawyers of national and international repute, train persons who are intending to take up advocacy, judicial service, law officers/managers and legislative draftsman as their profession. It was stated that the said Act was incorporated with a solemn purpose for educating students and training them in the field of law thereby serving the society and at the same time preparing better qualitative professionals. It was stated that the University was established in May, 2003 which delivered outstanding result until respondent No.5 Dr. Sukhpal Singh has assumed the charge of Vice Chancellor (for short 'VC').

4. It was stated that petitioner, Dr. Avinash Samal, is an Assistant Professor in the University and also a member of the Executive Council (for short 'EC') and was present in the Executive Council Meeting held on 06.09.2014 which was the starting point of the lis. It was further case of petitioner that vide order dated 05.03.2011 respondent No.5 was appointed as Vice Chancellor of the University for a period of 5 years or till the age of 65 years, whichever is earlier, in terms of statute 19(5) read with section 8(2) of the Act (No.10 of 2003). Thereafter, respondent No.5 had assumed the office and started functioning as Vice Chancellor from 30.03.2011. It was during his tenure of the Vice Chancellor, an amendment was incorporated in the statute 19(5) of the Act, 2003 enhancing the upper age limit from 65 years to 70 years. Subsequent to it a meeting of the Executive Council was scheduled to be held on 06.09.2014 and the agenda for the said meeting was circulated among the members including the petitioner. It was stated that the agenda was placed for discussion only with respect to making amendment in the Statute of the university for extension of tenure of Vice-chancellor in general and not specifically for the extension of the tenure of Prof. (Dr.) Sukhpal Singh, the existing Vice Chancellor. It was the further case of petitioner that in the executive council meeting convened on 6.09.2014 there was no discussion about the extension of tenure of respondent no.5 to the post of Vice-chancellor and the said proposal was not circulated to some members of the Executive Council including the petitioner and extension of tenure of Prof. (Dr.) Sukhpal Singh was never put to

discussion.

5. It was further stated that vide notification dt. 25.11.2014 an amendment was published by the In-charge Registrar, Shri R.L. Masiya in the official gazette. Before that on 06.09.2014 the recommendation was made for extension/repetition of tenure for Vice Chancellor and on that basis extension of tenure of respondent No.5 till the age of 70 years was made. It was further the case of the petitioner that extension of tenure was granted on the information supplied by the Registrar to Hon'ble Chancellor on the wrong facts as proper facts were not placed. It was further contended that the executive counsel was misled and manipulated as no discussion for extension of tenure of respondent No.5 ever took place.

6. Further it was contended that the amended provision in statute 19(5)(A) of the university did not come into existence on 06.09.2014 as such the power for extension of tenure of Vice Chancellor could not have been exercised by the Executive Council (EC) under the statute 19(5)(A) when it was not at all in existence on 06.09.2014. It was further stated that the petitioner was not aware of the said proceeding as wrong facts were recorded and for the first time the illegality came to the light on 21.8.2015 for which a detailed representation was made on 24.08.2015 but nothing had transpired. Therefore, it was pleaded that the order dated 02.12.2014 granting extension of tenure of the Vice-chancellor is illegal as the Chancellor of the University was misled by the University to have issued the said orders.

7. Learned counsel for the appellant while assailing the

judgment submitted that on 11.04.2014 the amendment was made in the statute enhancing the age of retirement of Vice Chancellor from 65 to 70 years. It was stated that the agenda of the Executive Council meeting of 6.09.2014 was only aimed at to amend the statute and not to evaluate the individual performance. It was further stated that unless the amendment is borne in the statute the same cannot be given effect to and the recommendation of the Council for enhancement of the age of existing VC from 65 to 70 years could not have been made. It was stated that as per section 15(4) of the Act 2003 unless the assent is granted by the Chancellor, the amendment could not have been stated to be incorporated.

8. It is further stated that the notification of the amendment was made on 25.11.2014 and the presumption, therefore, may follow that the entire exercise u/s 15(4) of the Act was not acted upon. It is stated that as per the section 15(6) of the Act, 2003 the publication of notification was made in the official gazette about the extension of age on 25.11.2014, therefore, the amendment would come after the publication is made and no retrospective effect could have been given. It is further stated that there is no document on record before the court to show that any performance record was placed for consideration by the Executive Council, therefore, the statutory recommendation which is required under the law cannot be sidelined. It is further stated that the petitioner is a professor who represents the students, teachers and other faculty members, therefore, he being member of Executive Council is not a stranger and when such appointment is

considered then the institutional superiority has to be given preference. It is stated that the larger public interest is involved in this case and it is contended that the learned single judge failed to appreciate these facts and has not applied the ratio laid by the Supreme Court in proper perspective.

9. It is further contended that the ratio of decision rendered in ***Bihar Public Service Commission v. S.J. Thakur AIR 1994 S.C. 2466*** cannot be applied to the facts of the present case and it does not support this case as the statute was not existing. It is further submitted that the petitioner has come to the Court with specific relief invoking jurisdiction under Article 226 of the Constitution of India, therefore, if the writ petition after filing of the same is categorized in certain category, the caption of it and the registration of the petition will not decide the fate of litigation qua the relief claimed. Therefore, the "person aggrieved" as has been interpreted by the learned single judge has been wrongly followed which do not have any legal sanctity. So he prays that the order of the learned single judge may be set aside and the relief(s) claimed by the petitioner may be allowed.

10. On the other hand, Mr. J.K. Gilda, learned Additional Advocate General appearing on behalf of Respondent No.1/State would submit that dismissal of the writ petition by the learned single judge only on the ground of *locus standi* cannot be supported. It is stated that the learned single judge has taken a narrow view qua the nature of complaint made. He placed reliance on a case law reported in ***AIR 1982 SC 149 – S.P. Gupta and others v.***

President of India and others and would submit that the dismissal of writ petition only on the ground of *locus standi* and acquiescence cannot be sustained. It is further submitted that the part of resolution whereby it records the recommendation on the basis of merit of respondent no.5 to extend his tenure till 70 years of age cannot be the subject of question in any court as it has to be left to the wisdom of the Executive Council. It is submitted that the order of the Executive Council cannot be subject of consideration in any other forum by exercising the appellate jurisdiction over the same.

11. Per contra, Mr. Sumesh Bajaj, Advocate appearing on behalf of the University/Respondents 2 & 4 opposed the contention and stated that the petitioner was part of the meeting dated 06.09.2014 and the meeting was presided over by Hon'ble Chancellor and the other legal luminaries and the agenda was supplied 15 days well in advance. It is contended that the statue 19 of the University was amended and published in the official gazette on 12.04.2014 whereby the age of the Vice Chancellor was extended up-to 70 years from 65 years. It was further stated that the extract of the meeting was circulated for which the Registrar was obliged to keep the documents as the respondent has placed them on record. The copy of the same shows that the notice of the meeting of Executive Council was circulated 15 days in advance with dispatch number. It was further stated that as per the Agenda No.4 which proposes the amendment in the statute 19(5) of the University Act 2003 such recommendation for enhancement for second tenure of V.C was made to ensure

the certainty about the next Vice Chancellor. It is further submitted that the members of the executive council who were present includes the petitioner and conscious decision was taken in Agenda No.4 whereby the statute 19(5) was amended and new proviso 19(5)(A) was added in the statute book and it was decided that amendment be made over to the Hon'ble chancellor for his kind assent as provided u/s 15(4) of the Act, 2003. It was stated that simultaneously it was decided that the recommendation be made to the Hon'ble Chancellor to extend the existing tenure of the vice chancellor for a period of next five years that is upto the age of 70 years in terms of the amendment in statute as 19(5)(A).

12. It is further contended that after the meeting dated 06.09.2014 it was duly forwarded to the Hon'ble Visitor for his perusal which was approved by him. Therefore, the allegations of the petitioner that the minutes dated 06.09.2014 was manipulated is completely wrong. It was next contended that the petitioner himself was present in the meeting and even if he was dissenting, he could not have challenged the outcome of the proceeding of 06.09.2014.

13. It is further contended that the learned Single Judge while adjudicating the petition dismissed it primarily on the ground that the petitioner do not have locus standi to challenge the extension. It is further contended that the learned Judge further held that petitioner Dr. Avinash Samal was neither qualified nor claimed to be appointed to the post of Vice Chancellor of the University. The submission is made that for the aforesaid reasons, the petitioner cannot maintain the writ

as person aggrieved. It is further contended that learned single judge has rightly held that a person who seeks relief under Article 226 must have a personal or individual right in the subject matter and the word 'ordinary' includes the person who has been prejudicially affected by the act or omission of an authority. It is submitted that the learned Single Judge has rightly held that in the executive council meeting held on 06.09.2014 the petitioner was also party to it whereby the decision for extension of tenure of respondent no.5 Vice Chancellor of the University was made. It is further contended that the learned single judge has rightly appreciated the stand taken by the University which stated that the said agenda was tabled and discussed wherein the petitioner was also present and the agenda was also circulated to the members, therefore, the petitioner being the member of the Executive Council cannot challenge the resolution though he may not have agreed to it.

14. Further learned counsel for respondents 2 & 4 i.e., HNLU & Vice-Chancellor supported the order of the learned single judge. He referred to the judgment reported in *Bihar Public Service Commission (Supra)* and stated that the petitioner was present in the Executive Council Meeting and was a party to the recommendation made for extension of the age of Vice Chancellor, therefore, he cannot challenge the same even if he has not consented to it. Further it is submitted that the nature of petition is a service writ and it is not a case that the petitioner is not entitled for the post of vice chancellor. He referred to the judgments rendered in ***AIR 1993 SC 1769 R.K. Jain v. Union of India*** & ***AIR 1980***

1255 Dr. N.C. Singhal v. Union of India and would submit that the petitioner do not have any locus standi.

15. It is further submitted that the petitioner is only an interloper and the writ petition was not a Public Interest Litigation as the petitioner was not a rival candidate to respondent no.5 Sukhpal Singh for the post of Vice Chancellor. Further reference was made to case laws reported in *AIR 1999 SC 943 (Para 8) – Utkal University v. Dr. Nrusingha Charan Sarangi* and *AIR 1987 SC 1399 (Para 27)* and would submit that since the petitioner was not qualified to be appointed as Vice Chancellor the writ petition in the like nature do not lie. Counsel further went through the pleadings of the writ petition and submitted that in the facts and circumstances of the existing pleadings, it is the case of the petitioner that interpolation was made in the agenda and minutes but it is negated by the documents filed along-with the return which would show that prior to the meeting also it was circulated to all the members of the Executive Council, thereafter, the minutes was also sent for approval of the Hon'ble Visitor, therefore, the existence of the same cannot be put to a question.

16. It is contended that it is not a case of the petitioner that he has stated that the resolution was passed but the respondents were not authorized to pass the same as the statute was not amended. It is further contended that the presence of the petitioner having been shown in the meeting, the same has been suppressed by the petitioner in his writ petition, therefore, the petitioner has not come with clean hands which entitles him for dismissal of the petition. It

is further contended that as per the statute, the registrar has performed his duty, therefore, this cannot be stated that resolution so recorded was not existing at all.

17. The Counsel further submitted that after the Hon'ble Visitor consented to take part in different meetings, the meetings of the Executive Council could not be held frequently as was being done earlier in a short period of notice and under those circumstances, exigency has arisen as the Vice Chancellor Sukhpal Singh who was retiring on 31.12.2014, therefore, to avoid the difficulty, the recommendation was made as per the statute 15(3) of the Act, 2003 and the statutes were amended by the Executive Council. It is contended that the effect of such extension of time of VC was differed till the publication of amended statute is made. He placed reliance in ***Chandigarh Administration through the Director, Public Instructions (Colleges) Chandigarh v. Usha Khetrapal Waie AIR 2011 SC 2956*** and contended that under the circumstances, the Executive Council was very much within its power to recommend the extension of tenure of VC as per the contemplated publication of amended statute.

18. It is further submitted that as per Rule 19(5) of the Recruitment Staff Rules of the College the staff regulation which allows the extension of period for Vice Chancellor, therefore, the Executive Council was empowered by the Staff Regulation to extend the tenure of respondent Sukhpal Singh for second time. It is stated that the extension of period of VC which was made by letter dated 02.12.2014 was in two parts. It is stated that in first part there was a contemplation

in conformity to the amended statute to increase the age of the Vice-chancellor from 65 to 70 years, while the second part is based on recommendation for enhancement for the tenure of VC. It was stated that the Executive Council was very much within its power under the Act to amend the statute which was done and since the period of VC was going to be lapsed on 31.12.2014, the extension of tenure for second time was recommended considering the exigency as also the facts and situation of the issue.

19. It is further contended that the pleadings of the petition would show that the petitioner has suppressed many facts, therefore, the petition is liable to be dismissed for suppression of facts. He placed reliance in ***AIR 2006 S.C. 3106*** *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Assocn.* and submits that the petitioner has no locus standi to file the petition and further suppressed the material facts and since he was not qualified for the post of Vice Chancellor, as such, the writ of certiorari cannot be issued and the petition is liable to be dismissed.

20. We have heard learned counsel for both the parties at length and have also perused the records.

21. The submission was made by both the appellant and the respondent-University covering the locus-standi as also the merit involved in this case. After hearing the parties and considering the nature of controversy involved we are inclined to deliberate on the point of locus standi at first. The core issue of controversy revolves round the extension of time of the vice chancellor of the Hidayatullah National Law University for the second tenure. The University decisively

broke with its own past as such it would be necessary to get back to basics to know the object of establishment of such University. The object for which the university was established purports that it was for the purpose of advancement of learning, teaching, research and diffusion of knowledge in the field of law and allied sciences. The object also speaks of catering to the needs of the Society by developing professional skills and to train lawyers of national and international repute, train persons intending to take up advocacy, judicial service, law officer/managers and legislative draftsman as their profession, therefore, the entire object is pertaining to field of law and legislature.

22. Here in this case, the appellant/petitioner has rushed to the Court ringing the bell of the Court to test the extension of tenure of the Vice Chancellor of the University for a further period of 5 years on the ground that the statute on which the recommendation was made for second tenure of existing Vice Chancellor for extension of period was not there on the date of recommendation with the Executive Council. Therefore, the grievance so raised is required to be answered that whether the legislative route adopted by E.C. of the University existed or not ? The issue being of prime importance needs to be taken to its logical end and the appellant cannot be left in squeezed space particularly in the light of object of the University which is specifically meant for producing legal experts. It is not in dispute that the petitioner is a Professor in the same University and also a member of the Executive Council. The schedule of the Act of 2003 is framed u/s 15. Statute 7 defines the Executive

Council. Clause (viii) of the Statute 7 prescribed that two senior most faculty members to be nominated by the Vice Chancellor by rotation.

23. The appellant has contended that statute 19(5)(A) did not come into existence on the date of recommendation to renew the tenure of Vice Chancellor on 06.09.2014. Therefore, how the Executive Council is formed would be necessary. The E.C. is defined in statute 7 of the Act of 2003 which consists of the following people :

EXECUTIVE COUNCIL

7. Membership of the Executive Council.- (1) The Executive Council shall consist of the following, namely :-

(i) The vice-chancellor
(ii) One member of the General Council (to be nominated by the General Council);
(iii) Advocate General, Chhattisgarh;
(iv) The Secretary to the Government, Law and Legal Affairs Department, Chhattisgarh
(v) The Secretary to the Government, Higher Education Department, Chhattisgarh
(vi) The Secretary to the Government, Finance Department, Chhattisgarh;
(vii) The Chairman, the State Bar Council, Chhattisgarh
(viii) Two Senior most Faculty Members to be nominated by the Vice Chancellor by rotation
(ix) Two eminent academicians or jurists to be nominated by the Visitor;
(x) Chairman, Bar Council of India

24. The object to include “faculty member” in the Executive Council, therefore, has its own importance and can be assumed that it is not included for any slippery expertise.

The faculty members who on daily routine impart learnings to the students at times may be the representatives of students. Therefore, the faculty and corpus of the University are inseparable as one exists for other. The part of successful story of University cannot be therefore scripted by ousting the faculty members of the University.

25. The learned single Judge while holding the locus of the appellant has relied on a case law reported in ***AIR 1966 SC 828 – Gadde Venkateswara Rao v. Government of Andhra Pradesh***. The learned single Judge referred to Para 8 of the said judgment to hold that the petitioner was not a person who was prejudicially effected for the acts and omission. After reading the said judgment we are in respectful disagreement with the learned single judge as the ratio laid in that case itself would show that Article 226 confers a wide power on the High Court to issue directions and writs of nature mentioned therein for the enforcement of any rights conferred by Part III or for any other purpose. It is held that it is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief thereunder. It further lays down that the article in terms does not describe the classes of persons entitled to apply there under. It also lays down the right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified". The Supreme Court in such case law has reiterated the law laid down in ***Calcutta Gas Co. (Proprietary) Ltd. v. State of***

West Bengal (1962) Supp. 3 SCR 1 (AR 1962 SC 1044 at p.1047) and held that "ordinarily" the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject matter of the petition. It further held that a personal right need not be in respect of a proprietary interest: it can also relate to an interest of a "trustee". Therefore it was laid down that the expression "ordinarily" indicates a person who has been prejudicially affected by an act or omission of an authority "can file a writ" even though he has no proprietary or even fiduciary interest in the subject-matter thereof and if a person is prejudiced by an order, the petition under Article 226 of the Constitution of India would be maintainable.

26. In the light of aforesaid principles this Court cannot ignore the position of the petitioner. Admittedly the petitioner was a member of E.C., and was a faculty member. The importance of the Executive Council and the members thereof would be of prime importance. The position of the petitioner can be taken to be a trustee of the students and any specific grounds of like nature can always be stretched before the Court of law.

27. Likewise in the case of ***Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed (1976) 1 SCC 671*** the Court observed that in order to have *locus standi* to invoke the extraordinary jurisdiction under Article 226, the applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some of the writs like habeas corpus or

quo warranto this rule is relaxed or modified. The Supreme Court held that the expression “ordinarily” indicates that this is not a caste-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject matter. The court further held that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. It further held that that the persons of busy body or meddlesome interlopers are easily distinguishable from other categories and such persons interfere in things which do not concern them and they pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect. It further held that the distinction between the 'person aggrieved' and 'stranger', though real, is not always well-demarcated. The 'person aggrieved' has, as it were, two concentric zones; a solid central zone of certainty, and a gray outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. It held that the applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the gray outer circle the bounds which separate the first category from the second, inter mix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be “persons aggrieved”. It lays down that to distinguish such applicants

from 'strangers', among them, some broad tests may be deduced from the conspectus made above.

28. In a decision rendered by the Supreme Court in ***Bar Council of Maharashtra v. M.V. Dabholkar and others (1975) 2 SCC 702***, the "person aggrieved" has been defined. The learned single Judge has relied on para 28 of the said judgment. We are again in respectful disagreement with the finding arrived at by the learned single Judge. The ratio laid down in such judgment rather holds the sway in favour of the appellant/petitioner. It has been laid down that the words "person aggrieved" are found in several statutes and the meaning of words "person aggrieved" will have to be ascertained with reference to the purpose and the provisions of the statute. Here the statute is the Act, 2003 and the renewal of tenure of its Vice Chancellor is subject matter. The purpose and object is confined to the legal and legislative affairs and to prepare the students for the Society. Therefore, if the faculty members who are part of the Executive Counsel raise an objection to the extension of time of vice-chancellor, in our considered opinion, the same cannot be nipped in the bud and the court cannot say that will not look into the complaint made. In case of *Bar Council of Maharashtra v. M.V. Dabholkar (supra)*, the Court has observed and laid down that normally one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". It further held that again a person is aggrieved, if a legal burden is imposed on him. The petitioner being a member of E.C., therefore, would have a

legal burden on him. The ratio further laid down that the meaning of words “a person aggrieved” is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. It further laid down that the restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality.

29. The Supreme Court has further held that the tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are : Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of ? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced. Further, has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action ? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? Is the statute, in the context of which the scope of the words “person aggrieved” is being considered, a social welfare measure designed to lay down ethical or professional

standards of conduct for the community ? Or is it a statute dealing with private rights of particular individuals ?

30. If the aforesaid principles as laid down by the Supreme Court are read in parallel to the object of the Act, 2003 and are placed in juxtaposition with the formation and object of the constitution of Executive Council wherein the faculty members of the college are included, the position of the petitioner can be held within the person aggrieved other than stranger. The petitioner who is the faculty member in the college has to hold his head high before the students and staff of University cannot be expected to be tongue tied and should carry forward the belief that institution has followed the statute made for it without any deviation from it. If any challenge is made by knocking the door of the court, it has to be given weightage instead of closing the doors. Therefore, the petitioner has locus standi to challenge any decision of E.C.

31. The respondent University submitted that the petitioner/ appellant was consenting party in the meeting of the Executive Council held on 06.09.2014. It is further submitted that the petitioner has also consented to the minutes and was a party to the recommendation made, therefore, he cannot object to the decision made. The reliance is placed in *Bihar Public Service Commission (Supra)*. The Supreme Court in that case has held that the sitting member of the Public Service Commission cannot question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its member and it ought to be so for the simple reason that

the member was regarded to be the party to the function required to be performed or the duty required to be discharged by the Public Service Commission as a body or institution, even though he might have been a dissenting member or a member in a minority or a member who had abstained from taking part in such function performed or duty discharged. It is further held that the discretionary remedy vested in the High Court under Article 226 of the Constitution cannot, therefore, be allowed to be invoked by a member of the Public Service Commission to question the correctness or validity of functions performed or duties discharged by the PSC as a body or institution.

32. The learned Single Judge relied on the ratio laid down in the *Bihar Public Service Commission (supra)* to hold that since the appellant was party to the Executive Council, the executive council cannot question the validity of the decision of the Agenda dated 06.09.2014. At this juncture, if the pleadings are gone through, the appellant petitioner has made two fold pleading. One, the recommendation for extension of Vice Chancellor was not part of the Agenda and also importantly the pleading contains the statement of fact that the statute based on which recommendation was made for extension of period of V.C, did not exist in the statute. It is a settled principle that there cannot be estoppal against the law. So for the sake of arguments even if it is found that the petitioner appellant was a party to the Agenda and ultimately it is found that the amended statute did not come into existence as it failed to travel to the legislative route provided under the Act 2003 then certainly that ratio of

Judgment in *Bihar Public Service Commission (supra)* will not apply in the the given facts of the case. Therefore, without examination of the state of affairs as to what was the existing statute on the date, at the threshold if the petition is dismissed only on the ground of acquiescence, then the merit of the case will not be subject of scrutiny before any court of law.

33. Further reference was made to the case law reported in ***AIR 1993 S.C. 1769 (para 79) R.K. Jain v. Union of India,*** wherein it was held that in cases of service jurisprudence, it is settled law that it is for the aggrieved person i.e., non-appointee to assail the legality of the offending action. The third party has no locus standi to canvas the legality or the correctness of the action. Only public law, declaration would be made at the behest of the petitioner, a public spirited person. The submission is made that the petitioner appellant in any case was not a candidate for the post of Vice Chancellor, therefore, he could not have assailed the appointment of the Vice Chancellor of the University. If the pleading and the Act of 2003 are examined in this case, it would show that the Vice Chancellor of the University is appointed under the Act and Statute. Therefore, if any person questions the recommendation for extension of tenure of existing V.C., which was made without any sanction of law in such case the rival claim of any petitioner would not be an issue of concern as the appointment of VC to the institute of repute has to be sacrosanct.

34. Further, if we revert back to Chapter VI of the Act of 2003, Section 15 prescribed that the statute of the University shall

contain such instruction, directions, procedure and details as are necessary to be laid down under and in accordance with the provisions of the Act. Section 15(2) of it gives a binding effect of a statute to all authorities, officers, teachers and employees of the University and persons connected with the University. The petitioner has come with a pleading that Statute 19(5)(A) whereby the continuation of service of the Vice Chancellor was made did not come into existence on 06.09.2014. In those back-grounds, if we refer to the ratio laid down for *locus standi* in ***(2008) 9 SCC 54 Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar*** at Para 45, the Court has held thus:

> 45. We must now deal with the question of *locus standi*. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry sub-serves the greater public interest and has a far reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so."

35. By application of the aforesaid provision, we do not concur with the reasons assigned by the learned single judge to non-suit the appellant that he do not have the locus standi. The Supreme Court while dealing with the issue of importance has held that larger public interest has to be seen. Therefore, in the light of the above position, the reliance placed by the respondent in ***AIR 1980 S.C. 1255 (Para 21)*** that since the appellant/petitioner was not competent to be posted as the Vice Chancellor, the ratio cannot be applied to the given case.

36. Further the reliance was placed by the respondent University in a case law reported in ***AIR 1999 S.C. 943 Para 8***. It is contended that the petitioner was a meddlesome person or interloper, therefore, the petition cannot be a public interest litigation and the petitioner being not a candidate could not have filed the petition as the writ petition was registered as W.P (S) before the Court. It is stated that since certain complaints were made against the petitioner and before the actions could have been taken, the instant petition was filed before the Court. The letter dated 09th Sept. 2015 was referred in this context which is addressed by the President, Student Bar Association (Annexure R-2/29) to show that certain complaints were made by the Students. Along-with the copy of the Letter, list of the students along-with signatures in separately attached sheet was also filed. It is stated that the University was in the process of issuing show cause notice by letter dated 06.10.2015 (Annexure R-2/30) and before that the petition was filed in Court on 05.10.2015 (Annexure R-2/29).

37. A perusal of the letter dated 09th September, 2015 shows that the Students Bar Association had requested for change of Chief Proctor of Proctorial Board of the College. It is however not clear as to who was Chief Proctor of College. These allegations have been rebutted by the petitioner in rejoinder at Para 13 and more serious counter allegations have been leveled against the University of placing fabricated document of misusing of signed sheets of students in some other matters. It is stated that the separate signed sheets were not part and parcel of the letter dated 09th September, 2015 so as to form part of the complaint and some other signed papers were used. It was stated in the rejoinder that the signed sheets of signatures were part of the student campaign for another issue seeking indulgence of the University Authorities for taking action against one Abhist Tiwari, student of 7th Semester on account of a group clash. Further it shows that the show cause notice issued to the petitioner on 06.10.2015 is a day after the petition was filed. The contents would show that explanation was called for the reason that certain documents of conducting CLAT examination were missing. In reply to such rejoinder, no rebuttal has been made by the University and no further document was also filed to show that the students signature sheets attached separately with the letter dated 09th September, 2015 were also part and parcel of the letter of the students Bar Association. Therefore, prima facie the document filed by the University to assassinate the conduct of the petitioner itself stands rebutted with the over all contents of show cause letter (R-2/30) and complaint (R-

2/29).

38. When the facts are further evaluated, keeping the university as an institution on one part and the nature of allegations made on the other part, the principles laid down in case of ***(2013) 4 SCC 465 Para 18 (Ayaaub Khan Noorkhan Pathan v. State of Maharashtra)*** would throw the light which lays down that whether the person in fact in a legitimate position to lay any claim before any forum can be considered by the Court to find out irrespective of the fact whether the particular person can lay any claim for the post or not.

39. Further more, the Supreme Court in case of ***(2011) 4 SCC Pg.1 Para 43 – Center for PIL v. Union of India*** which deals with appointment of the Post of Central Vigilance Commissioner has held that when institutional integrity is in question, the touch stone should be the public interest and eventually the principle has been laid down that institution is more important than individual. Paras 43, 46, 47 of the said decision are relevant here and quoted below:

> *"43. Appointment to the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process of the recommendation (see SCC para 88 of N. Kannadasan v. Ajoy Khose (2009) 7 SCC 1. The decision to recommend has got to be an informed decision keeping in mind the fact that the CVC as an institution has to perform an important function of vigilance administration. If a statutory body like the HPC, for any reason whatsoever, fails to look into the relevant material having nexus to the object and purpose of the 2003 Act or takes into account irrelevant circumstances, then its decision would stand vitiated on the ground of official arbitrariness (see*

State of A.P. v. Nalla Raja Reddy AIR 1967 SC 1458). Under the proviso to Section 4(1), the HPC had to take into consideration what is good for the institution and not what is good for the candidate (see SCC para 93 of N. Kannadasan). When institutional integrity is in question, the touchstone should be "public interest" which has got to be taken into consideration by the HPC and in such cases, the HPC may not insist upon proof (see SCC para 103 of N. Kannadasan)

46. While making recommendations, the HPC performs a statutory duty. Its duty is to recommend. While making recommendations, the criterion of the candidate being a public servant or a civil servant in the past is not the sole consideration. The HPC has to look at the record and take into consideration whether the candidate would or would not be able to function as a Central Vigilance Commissioner. Whether the institutional competency would be adversely affected by pending proceedings and if by that touchstone the candidate stands disqualified, then it shall be the duty of the HPC not to recommend such a candidate. In the present case apart from the pending criminal proceedings, as stated above, between the period 2000 and 2004 various notings of the DoPT recommended disciplinary proceedings against Shri P.J. Thomas in respect of the Palmolein case. Those notings have not been considered by the HPC. As stated above, the 2003 Act confers autonomy and independence to the institution of the CVC. Autonomy has been conferred so that the Central Vigilance Commissioner could act without fear or favour.

47. We may reiterate that the institution is more important than an individual. This is the test laid down in SCC para 93 of N. Kannadasan v. Ajoy Khose (2009) 7 SCC 1. in the present case, the HPC has failed to take this test into consideration. The recommendation dated 03.09.2010 of the HPC is entirely premised on the blanket clearance given by

the CVC on 06.10.2008 and on the fact of respondent No.2 being appointed as the Chief Secretary of Kerala on 18.09.2007, his appointment as the Secretary of Parliamentary Affairs and his subsequent appointment as the Secretary, Telecom. In the process, the HPC for whatever reasons, has failed to take into consideration the pendency of the Palmolein case before the Special Judge, Thiruvananthapuram being case CC No. 6 of 2003; the sanction accorded by the Government of Kerala on 30.11.1999 under section 197 CrPC for prosecuting inter alia Shri P.J. Thomas for having committed the alleged offence u/s 120-B of IPC read with section 13(1)(d) of the Prevention of Corruption Act; the judgment of the Supreme court dated 29.03.2000 in K. Karunakaran v. State of Kerala (2000) 3 SCC 761 in which this Court has observed that : (SCC p. 767, para 8).

"8. ... the registration of the FIR against [Shri Karunakaran] and others cannot be held to be the result of mala fides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities [and in such cases] probes conducted are required to be determined on the facts and in accordance with law."

(Emphasis supplied)

Further, even the judgment of the Kerala High Court in Criminal Revision Petition No. 430 of 2001 has not been considered."

40. The Supreme Court fuhrer in ***AIR 1982 S.C. 149 – S.P. Gupta v. President of India*** held that the traditional rule of locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person who is likely to suffer a legal injury by reason of

threatened violation of his legal right or legally protected interest by any such action cannot be universally applied and if the applicant has sufficient interest in the subject matter, he can maintain a lis before the Court.

41. In the instant case, the petitioner who is a member of the Executive Counsel has challenged the extension of tenure to the Vice Chancellor of the University by claiming that the extension of second tenure was not proper. If the main object of the Act 2003 is seen under which the University is established, it can be safely inferred that the purpose and object was to establish a university of excellence in law. Therefore if the member of Executive Council has raised the plea that the extension of time under a statute on which it was made was not in the statute book on the date of recommendation in such case the petitioner cannot be thrown out of the Court only on the ground of *locus standi*. Accordingly, we hold that the petitioner has the locus to challenge the extension of time to Vice Chancellor of the University and we are in disagreement with the finding of learned single judge to that extent and the same is set aside.

42. The statute 19(5) prescribes the term of the Vice Chancellor as under:

> "19(5). The term of Vice Chancellor, except the first Vice Chancellor, shall be five years from the date on which he enters upon his office or until he attains the age of sixty five years, whichever is earlier."

The facts would show that respondent no.5 was appointed as Vice Chancellor of the University on 05.03.2011 by Hon'ble the Chancellor vide Annexure R-2. The said appointment

was made in terms of the Statute 19 of the Act of 2003 in the schedule to the aforesaid Act for a period of five years or until he attains the age of 65 years whichever is earlier subject to doctrine of pleasure. The date of birth of the Vice Chancellor Prof. (Dr.) Sukhpal Singh was shown as 01.01.1950 as per Annexure R-2/2. The provisions of statute 19(5) ended with words “whichever is earlier”. Therefore, the term of respondent No.5 would have normally expired on 31.12.2014. However, in the instant case the term did not come to an end on 31.12.2014 for the reasons shown below.

43. During the tenure while respondent No.5 Vice Chancellor was holding the office, on 11th April, 2014 a notification was made pursuant to the power conferred on Hon'ble Chancellor u/s 15(5) of the Statute and the age of the Vice Chancellor from 65 years was amended to 70 years. The notification dated 11th April, 2014 reads as under:

हिदायतुल्ला राष्ट्रीय विधि विश्वविद्यालय, रायपुर

रायपुर दिनांक 11 अप्रैल 2014

अधिसूचना

क्रमांक 227/PPS/2014—हिदायतुल्ला राष्ट्रीय विधि विश्वविद्यालय छततीसगढ़ अधिनियम, 2003 (क्रमांक 10 सन् 2003) की धारा 15 की उप धारा (5) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए तथा राज्य सरकार के परामर्श से, कुलाधिपति, एतद्द्वारा, उक्त अधिनियम की अनुसूची में समाविष्ट परिनयिमों में निम्नलिखित संशोधन करती है, अर्थात् :—

संशोधन

उक्त परिनियमों में, —

खण्ड 19 के उप—खण्ड (5) में, शब्द एवं अंक ‘‘65 वर्ष’’ के स्थान पर, शब्द ‘‘सत्तर वर्ष’’ प्रतिस्थापित किया जाये.

हस्ता./–
(यतीन्द्र सिंह)
कुलाधिपति
हिदायतुल्ला राष्ट्रीय विधि विश्वविद्यालय,
रायपुर (छत्तीसगढ़)

By such amendment the Statute 19(5) would be read as under :

> "19(5). The term of the Vice Chancellor, except the first first Vice Chancellor, shall be five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier."

By effect of such notification, the tenure of the petitioner was automatically extended to 04th March, 2016 as the age of 65 years was amended to 70 years and five years would come to an end on 04th March, 2016 since the initial appointment was on 05.03.2011.

44. The respondent University submitted before the Court that since the emergent situation existed to extend the tenure of the Vice Chancellor, therefore, the meeting was held on 06.09.2014 as it was not possible for the Hon'ble Visitor to attend the dates of meeting frequently and reference was made to Annexure R-(2)4 to show that the Hon'ble Visitor attended every meeting after 2011 till 22.08.2015 and so on whereas on earlier occasion the period in between the meetings were short. It is stated that to avoid the emergency like situation and to avoid the possible situation the University may not remain without the Vice Chancellor, the urgent meeting was held and proposal was made to extend the period of tenure of existing Vice Chancellor for further period of 5 years. The said submission appears to be devoid of all logic. The urgency as is projected by the

University does not invoke any trust as the statute 19(5) having been amended enhancing the age of V.C., to 70 years, even otherwise respondent No.5 was entitled to continue in office till 4th March, 2016 on the date of completing 5 years from the date of his initial appointment.

45. Section 8 of the Act, 2003 deals with Chancellor of the University. It prescribes that the Chief Justice of the High Court of Judicature of Chhattisgarh shall be the Chancellor of the University. Section 8(2) is relevant here and quoted below:

> "**8. Chancellor of the University.--** (1) The Chief Justice of the High Court of Judicature of Chhattisgarh shall be the Chancellor of the University.
>
> (2) The Chancellor shall appoint the Vice Chancellor of the University in accordance with the procedure and subject to the conditions prescribed in the statutes."

46. Statute 19 of the Act of 2003 deals with appointment of the Vice Chancellor and other persons thereunder. Relevant portion of section 19 is reproduced here-in-below :

> "19. **Appointment and the powers of the Vice-Chancellor.-** (1) The Vice Chancellor shall be appointed by the Chancellor on the principle of "the doctrine of pleasure" upon the recommendations of a Search Committee and after obtaining the advice of the State Government thereon :
>
> Provided that the Special Officer appointed by the State Government shall be the first Vice Chancellor of the University for a period not exceeding three years :
>
> (2) The Search Committee, referred to in sub-section (1) shall consist of the following:-

(i) A person nominated by the Executive Council who should not be connected with the University or any other college affiliated to the University or any institution thereof ;

(ii) One eminent authority on law nominated by the Chancellor ;

(iii) One nominee of the Chairman, Bar Council of India

(3) The Chancellor may appoint one of the members of the Search Committee constituted under sub-section (2) to act as the Chairperson of the Committee.

(4) The Search Committee shall submit a panel of at least three suitable persons for appointment to the position of Vice-Chancellor for the consideration of the Chancellor ; and the panel may include any such person who has served as the Vice Chancellor of the University previously.

(5) The term of the Vice Chancellor, except the first Vice Chancellor shall be five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier ;

(6) The Vice Chancellor shall be the Chief Executive and Academic Head of the University and subject to the specific and general directions of the Executive Council, he shall exercise all powers of the Executive Council in the management and administration shall exercise all powers of the Executive Council in the management and administration of the University ; “

47. Section 15 of the Statute contained in Chapter VI of the Act, 2003 prescribes the mode that how the statutes would be made. To effect an amendment in the Statute, section 15 of the Act, 2003 is relevant here and quoted below :

CHAPTER VI

STATUTES, ORDINANCES AND REGULATIONS

"**15. Statutes.-** (1) The statutes of the University shall contain such instructions, directions, procedures and details as are necessary to be laid down under and in accordance with the provisions of this Act.

(2) The statutes as contained in the Schedule to this Act as amended from time to time, shall be binding on all authorities, officers, teachers and employees of the University and persons connected with the University.

(3) Executive Council shall have all powers to make any amendments in the Statutes contained in the Schedules to this Act.

Provided that the Executive Council shall not amend statute affecting the constitution, status or power of any authority of the University without affording to such authority a reasonable opportunity of making a representation on the proposed changes.

(4) Any amendment to the Statutes, whether by adding, deleting or in any other manner, shall not take effect unless the Chancellor has , after consultation with the State Government, assented to it, and he may after the said consultation and on being satisfied that assent be not given, withhold assent or return the proposal for amendment to the Executive Council for re-consideration in the light of observation, if any made by him.

(5) Notwithstanding anything contained in sub-section (3) or sub-section(4) the Chancellor shall have power to amend, after consultation with the State Government whether by adding, deleting, or in any other manner, the Statutes contained in the Schedule.

(6) An amendment to the Statues shall come into force on the date of its publication in the Official Gazette."

48. This is an undisputed fact that on 06.09.2014, the Executive Council took up different proposals. Agenda No.3 & Agenda No.4 and their decisions are relevant to this case and quoted below:

Sl.	Agenda Item
3.	**Proposal for the amendment in the existing appointment orders of the Vice Chancellor, teachers and non-teaching employees of the University:** **Notes:** (a) The executive Council of the University in its meeting dated 14.12.12013 had decided to (i) enhance the age of superannuation of the Vice-chancellor from 65 (sixty five) years to 70 (seventy) years; and (ii) send a request to Hon'ble the Chief Justice, High Court of Chhattisgarh and the Chancellor of the University to amend the relevant provision of the Statute regarding enhancement in the age of superannuation of the Vice Chancellor from 65 (sixty five) years to 70 (seventy) years. Accordingly, a request was made and the Hon'ble Chancellor of the University had been pleased to amend the relevant provision of the Statute in consultation with the State Government. The amendment so made had also been published in the State Government Gazette Notification dated 12.04.2014. Section 15(2) of the Hidayatullah National University of Law Chhattisgarh Act, 2003 (No.10 of 2003) provides as under: *Quote* "15(2) The statutes as contained in the Schedule to this Act as amended from time to time, shall be binding on all authorities, officers, teachers and employees of the University and persons connected with the University." (b) The executive council of the University in the above-said meeting had also decided to enhance the age of superannuation. (i) of teachers from 60 (sixty) years to 65 (sixty five) years; and (ii) of non-teaching employees from 60 (sixty) years to 62 (sixty two) years. It is proposed that amendments as required under Clause (a) and (b) of Agenda item No.3 may be made in

	the appointment orders of the Vice-chancellor, teachers and non-teaching employees of the University. **It is also proposed that recommendation may also be made to Hon'ble the Chief Justice, High Court of Chhattisgarh and the Chancellor of the University for amending the existing appointment order of the Vice-chancellor in view of the State Government Gazette notification to this effect.** **Decision:** **The executive Council decided that amendments as required under Clause (a) and (b) of agenda item No.3 may be made in the appointment orders of the Vice Chancellor, teachers and non-teaching employees of the University.** **The Executive Council also decided that recommendation may be made to Hon'ble the Chief Justice, High Court of Chhattisgarh and the Chancellor of the University to amend the existing appointment order of the Vice Chancellor for the purpose of enhancing the age of superannuation from "sixty-five years" to "Seventy Years" in view of the publication of the amendment on 12.04.2014 in the Official Gazette of the State Government Gazette to this effect and as per the provisions contained in Section 15(2) of the Hidayatullah National University of Law Chhattisgarh Act, 2003 (No.10 of 2003)**
4.	**Proposed amendment in the University Statutes regarding extension of tenure as per provisions contained in the HNLU Staff Regulations and similar provisions in Statutes of some other National Law Universities of India.** **Notes:** The Executive Council of the University in its meeting dated 18.12.2005 had approved the HNLU Staff Regulations. Section 8.3(1)(b) of these Regulations, specifically provides for extension of tenure of the Vice-chancellor, which reads as under: *Quote:* "(b) On the basis of satisfactory services, after the expiry of normal tenure of 5 years, the Executive Council may request the Chancellor to consider extension of the tenure. Such extension of tenure of the Vice-chancellor can be extended upto the age limit of 65 years"

Unquote

This age limit of 65 years has now been substituted by 70 years, by latest amendment to the Statute. Similar provisions regarding extension of tenure/second term to Vice Chancellors are also contained in Statutes of some other National Law Universities of India such as the West Bengal National University of Juridical Sciences, Kolkata; the National Law School of India University, Bangalore; the NALSAR University of Law, Hyderabad and the Gujarat National Law University, Gandhinagar.

In order to implement the provisions contained in the HNLU Staff Regulations regarding extension of tenure of the Vice-chancellor of the University, the following amendments in the Statute 19(5) is proposed:-

Quote

In exercise of the powers conferred under Section 15(3) of the Hidayatullah National University of Law Chhattisgarh Act 2003 (No.10 of 2003), the Executive Council of the University recommends the following amendment in Statute 19(5) contained in the Schedule to this Act:-

AMENDMENT TO THE STATUTE 19(5) CONTAINED IN THE SCHEDULE TO THE HIDAYATULLAH NATIONAL UNIVERSITY OF LAW CHHATTISGARH ACT 2003 (NO.10 OF 2003) BY ADDING PROVISO 19(5)(A) AS UNDER:-

"19(5)(A) on the basis of satisfactory services, after the expiry of normal tenure of 5 (five) years, the Executive Council may recommend to the Chancellor to extend the tenure of the Vice-chancellor for a period of next 5 (five) years. Provided such extension of tenure of the Vice-chancellor can be upto the age of 70 (seventy) years only. Provided further, that upon the expiry of his term, the Vice-chancellor shall continue in office until his successor is appointed and enters upon his office.

In order to ensure certainty about the next Vice-chancellor, such recommendation be made reasonably well before the expiry of the normal tenure of the Vice-chancellor."

Unquote:

Accordingly, the matter is placed before the Executive Council for perusal and decision.

Decision :

In exercise of the powers provided under section 15(3) of the Hidayatullah National

University of Law Chhattisgarh Act 2003 (No.10 of 2003), the Executive Council of the University makes the following amendment in Statute 19(5) contained in the Schedule to this Act:-

Quote

AMENDMENT TO THE STATUTE 19(5) CONTAINED IN THE SCHEDULE TO THE HIDAYATULLAH NATIONAL UNIVERSITY OF LAW CHHATTISGARHY ACT 2003 (No. 10 OF 2003) BY ADDING PROVISO 19(5)(A) AS UNDER:

"19(5)(A). On the basis of satisfactory services, well before the expiry of normal tenure, the Executive Council of the University may recommend to the Chancellor of the University to extend the existing tenure of the Vice-chancellor, beyond his/her initial tenure, for a period of next five years and the chancellor shall have the power to grant such extension of the existing tenure of the vice-chancellor, provided that such extension of tenure of the Vice-chancellor can be upto the age of seventy years only. Provided further, that upon the expiry of his/her term, the Vice-chancellor shall continue to remain in office until his/her successor is appointed and enters upon his/her office.
Unquote:

The Executive council noted that as per Section 15(4) of the Hidayatullah National University of Law Chhattisgarh Act, 2003, the above amendment shall not take effect unless the Chancellor, after consultation with the State Government, has assented to it. Hence, the Executive Council decided that in order to ensure that the above amendment to the Statute takes effect, a request may be made to the Hon'ble Chief Justice, High Court of Chhattisgarh and the Chancellor of the University, for his assent. The Executive Council also decided that in order to expedite this matter, the Vice Chancellor may personally meet the Hon'ble Chancellor.

In view of the above amendment to the Statute made by the Executive Council and the satisfactory services, rather remarkable services, of Prof.(Dr.) Sukh Pal Singh as Vice-chancellor of the University, the Executive Council recommends to the Hon'ble Chief Justice, High Court of Chhattisgarh and Hon'ble Chancellor of the University to extend the existing tenure of Prof.(Dr.) Sukh Pal Singh, Vice-chancellor, beyond his initial tenure, for a period of next five years or upto the age of seventy years, whichever is earlier. The above-said recommendation of the Executive Council to the Hon'ble Chancellor regarding extension

	of tenure shall take effect subject to publication of the said amendment in the Official Gazette of the State Government.

49. The order of extension of tenure of the Vice Chancellor Annexure P-1 dated 02nd December, 2014 is in two parts. The first para/part reads as under:

> (a) In view of the amendment to the statute of the University published on 12.04.2014 in the Official Gazette of the State Government, in the order dated 05th March, 2011 issued by the then Chancellor of the University appointing Prof. (Dr.) Sukhpal Singh, Professor of Law, Banaras Hindu University as the Vice Chancellor of the Hidayatullah National university of Law Chhattisgarh, the relevant portion pertaining to the age of superannuation of the Vice-Chancellor shall be read as "seventy years"

Reading of the said part of order dated 02.12.2014 shows that amendment enhancing the age limit for superannuation of vice Chancellor upto 70 years was made which was notified on 11.04.2014 in the gazette vide Annexure P-6. This part is not in dispute.

50. The second part of the extension order of the tenure of the Vice Chancellor reads as under :

> (b) In pursuance of the recommendation made by the Executive Council of the University in its meeting held on 06.09.2014 and in view of the amendment to the Statute of the University published on 25.11.2014 in the Official Gazette of the State Government, the existing tenure of Prof. (Dr.) Sukh Pal Singh as Vice Chancellor of the University, is extended beyond his initial tenure for a further period of five years or until he attains the age of seventy years, which ever is earlier, subject to the "doctrine of pleasure".

51. Reading of the decision on Agenda 4 which was resolved on 06.09.2014 shows that pursuant to the “amendment” to the statute made by the Executive Council and in view of the satisfactory service of Prof. (Dr.) Sukhpal Singh as Vice Chancellor of the University, the recommendation was made by E.C. to Hon'ble the Chief Justice, the Chancellor of the University to extend the existing tenure of the Vice Chancellor for the next 5 yeas or upto the age of 70 years whichever is earlier. The amendment was proposed in the meeting dated 06.09.2014 as statute 19(5)(A) which would have empowered the Executive Council to recommend the Chancellor to extend the existing tenure of Vice Chancellor for the next five years or until the age of 70 years whichever is earlier.

52. The submission made by the petitioner appellant is that such power to recommend the extension of period of Vice Chancellor as per the Statute 19(5)(A) was not in the statute book on the date of recommendation on 06.09.2014. Therefore, the power of such recommendation which was made for the repeat tenure of the Vice Chancellor was not vested with the Executive Council at the relevant time i.e., 06.09.2014.

53. If the the Act of 2003 is read as a whole it appears that the statute forms part of the Act. The statutes are under the head Schedule. When the schedules are appended to Act what would be the effect ? At this juncture, we are guided by the principle laid down by the Supreme Court in ***1989 (3) SCC 488 (Para 63) M/s. Ujgar Prints and others (II) v. Union of India and others*** wherein the law laid down in case of *Attorney-General v. Lamplough* was reiterated which

reads as under:

> "63. In Attorney-General v. Lamplough (1878) 3 Ex D214, 229 : 38 LT 87 : 47 LJQB 555 it is observed:
>
> A schedule in Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statute, and is as much an enactment, as any other part.
>
> *Maxwell* says (in Interpretation of Statutes, 11th end., p.156) :
>
> "……if an enactment in a schedule contradicts an earlier clause it prevails against it."
>
> *Bennion (in Bennion's Statutory Interpretation, pp, 568-569)* referring to the place of schedules in statutes observes :
>
> The Schedule is an extension of the section which induces it. Material is put into a Schedule because it is too lengthy or detailed to be conveniently accommodated in a section, ….
>
> A schedule must be attached to the body of the Act by words in one of the sections (known as inducing words). It was formerly the practice for the inducing words to say that the Schedule was to be construed and have effect as part of the Act. (See, e.g., Ballot Act, 1872, Section 28.). This is no longer done, being regarded as unnecessary. If by mischance the inducing words were omitted, the Schedule would still form part of the Act if that was the apparent intention.
>
> …… The Schedule is as much a part of the statute, and is as much an enactment, as any other part. (See also, to the like effect, Flower Freight Co. Ltd., v. Hammond (1963) 1 QB 275, R.v. Legal Aid Committee No.1 (London) Legal Aid Area, ex p. Rondel (1967) 2 QB 482, Metropolitan Police Commissioner v. Curran (1976) 1 WLR 87."

Reading of the aforesaid proposition would make it clear that the schedule is an extension of section of the Act and it would be a part and parcel of the Act itself. It further lays down that a schedule in an Act of Parliament is a mere question of drafting and is as much a part of the statute.

54. Again in ***1989(4) SCC 378 (Para 31) - M/s. Aphali Pharmaceuticals Ltd v. State of Maharashtra and others,*** the Supreme Court reiterated the principles laid down in Halsbury's Laws of England, Third Edition, Vol.36, Para 551 which reads thus :

> "To simplify the presentation of statutes, it is the practice for their subject matter to be divided, where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a schedule is as much a part of the statute, and as such an enactment, as is the section by which it is introduced."

The Schedule may be used in construing the provisions in the body of the Act. It is as much an act of legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the Schedule and the enactment, the enactment is to prevail and if any part of the Schedule cannot be made to correspond it must yield to the Act. Lord Sterndale, in *IRC v. Gittus (1920) 1 KB 563* said : (at 576) :

> "It seems to me there are two principles or rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule

as though the Schedule were operating for that purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act."

Reading of the above text makes it clear that the schedule is as much a part of the Act as the Act itself and it must be read together with the Act for all the purposes of construction. In the Act of 2003, the tenure of Vice Chancellor is governed by the statute, therefore, it would be an integral part of the Act itself.

55. A plain and simple reading of Statute 15 of the Act, 2003 shows that sub-section (3) of section 15 prescribed that the Executive Council shall have all the power to make any amendment in the statute contained in Schedule to this Act. Sub-section (4) of Section 15 further puts a rider that any amendment to the statute including the addition thereof "shall not take effect" unless the chancellor after consultation with the State Government assented to it and it further speaks that it would be the power of Chancellor to withhold the assent or return the proposal for amendment to the Executive Council for reconsideration in the light of observation, if any, made by him. Sub-section (6) of Section 15 speaks that an amendment

to the statutes shall come into force on the date of its publication in the official gazette.

56. Further the question arises for consideration as to when statute requires to do a particular act and compliance is required to be done and whether it can be sidelined ? The Supreme Court in case of ***(2002) 8 SCC 1 Justice K.P. Mohapatra v. Sri Ram Chandra Nayak*** discussed the implication of word “consultation” in para 14 which reads as under.

> “14. The Court in Indian Administrative service (SCS) Assn., U.P. v. Union of India, 1993 Supp (1) SCC 730 considered the phrase “after consultation with the Governments of states concerned” and discussed a number of decisions on the word “consultation” and held thus: (SCC pp. 752-53, para 26
>
> “26. The result of the above discussion leads to the following conclusions:
>
> (1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at-least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.
>
> (2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action *ultra vires* or invalid or void.
>
> (3) When the opinion or advice binds the

proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate order or take decision thereon. In such circumstances, it amounts to an action 'after consultation'.

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the court to determine in each case in the light of its facts and circumstances whether the action is 'after consultation'; 'was in fact consulted'; or was it a 'sufficient consultation'."

57. Further in ***(2013) 3 SCC 1 State of Gujarat v. R.A. Mehta (retired),*** the word "consultation" has been defined which reads as under :

"25. In State of Gujarat v. Gujarat Revenue Tribunal Bar Assn. (2012) 10 SCC 353 (SCC 372, para 34), this Court held that the object of consultation is to render its process meaningful so that it may serve its intended purpose. Consultation requires the

meeting of minds between the parties that are involved in the consultative process on the basis of material facts and points in order to arrive at a corre4ct or at least a satisfactory solution. If a certain power can be exercised only after consultation such consultation must be conscious, effective, meaningful and purposeful. To ensure this, each party must disclose to the other all relevant facts for due deliberation. The consultee must express his opinion only after complete consideration of the matter on the basis of all the relevant facts and quintessence. Consultation may have different meanings in different situations depending upon the nature and purpose of the statute (See also Union of India v. Sankalchand Himatlal Sheth (1977) 4 SCC 193; State of Kerala v. A.Lakshmikutty, (1986) 4 SCC 632 , High Court of Judicature of Rajasthan v. P.P. Singh (2003) 4 SCC 239; Union of India v. Kali Dass Batish (2006) 1 SCC 779, Andhra Bank v. Andhra Bank Officers (2008) 7 SCC 203 and Union of india v. Madras Bar Ass. (2010) 11 SCC 1."

58. Therefore, the amendment in statute which the Executive Council empowered to do under sub-section (3) of section 15 is interdependent on the opinion of the Chancellor in consultation the State Government. The provisions of the said section also appears to be logical in the sense that the State Government grants aid i.e., monetary support to the institution, therefore, the legislature might have thought it expedient to put such rider to take effect before the amendment is brought in the statute book.

59. The submission is made by respondent University that the Executive Council in exercise of its power under sub-section (3) of section 15 is empowered, therefore, the EC had amended the statute and a new statute as 19(5)(A) was

brought in the statute book. The new statute allowed the Executive Council to recommend the Chancellor of the University for extension of tenure of the Vice Chancellor beyond his initial tenure for a period of next 5 years or until he attains the age of 70 years. The issue falls for consideration as to whether sub-section (3) of Section 15 is interdependent of sub-sections (4) (5) & (6) of section 15. In the Book of ***Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition 2010*** *the principle laid down that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso as the judicial pronouncement calls it "an elementary rule that construction of section is to be made of all the parts together and that it is not permissible to omit any part of it and the whole section should be read together" Sub-sections in a section must be read as parts of an integral whole and as being interdependent, "each portion throwing light, if need be, on the rest".*

60. Again in ***(2017) 14 SCC 663 at para 35 (Mukund Dewangan v. Oriental Insurance Company Ltd*** the Supreme Court has reiterated the principle "the statute must be read as a whole is equally applicable to different parts of same section". The Court has further held that when the Statute language is plain and unambiguous and admits only one meaning, no question of construction of statute arises as the Act speaks for itself. Paras 35, 36 & 38 of the said decision are relevant here and quoted below:

> "35. The conclusion that the language used by the legislature is plain or ambiguous can only be arrived

at by studying the statute as a whole. Every word and expression which the legislature uses has to be given its proper and effective meaning, as the legislature uses no expression without purpose and meaning. The principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso, it is not permissible to omit any part of it, the whole section should be read together as held in *State of Bihar v. Hira Lal Kejriwal AIR 1960 SC 1107*.

36. The author has further observed that the courts strongly lean against a construction which reduces the statutes to a futility as held in *M. Pentiah v. Muddala Veeramallappa AIR 1961 SC 1107* and *Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709*. When the words of a statute are clear or unambiguous i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences as held in *Nelson Motis v. Union of India (1992) 4 SCC 711*, *Gurudevdatta VKSSS Maryadit v. State of Maharashtra (2001) 4 SCC 534* and *Nathi Devi v. Radha Devi Gupta (2005) 2 SCC 271*. It is also a settled proposition of law that when the language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises for the Act speaks for itself as held in *State of U.P. v. Vijay Anand Maharaj AIR 1963 SC 946.* the Court cannot supply *casus omissus*.

38. The words cannot be read into an Act, unless the clear reason for it is to be found within the four corners of the Act itself. It is one of the principles of statutory interpretation that may matter which should have been, but has not been provided for in a statute, cannot be supplied by courts, as to do so will be legislation and not construction as held in Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd 1932 SCC OnLine PC 71, Kamalaranjan Roy v. Secy., of State 1938 SCC OnLine PC 71 and *Karnataka State Financial*

Corporation v. N. Narasimahaiah 2008 5 SCC 176."

61. Therefore, the interpretation of section 15 would clearly demonstrate that the Executive Council has power to amend the statute but such power to amend has to pass through a legislative route as prescribed under subsections (4) (5) and will take effect only when such statute is published in the official gazette as per sub-section (6) of section 15. The facts as placed on record would suggest that a decision was taken by the Executive Council to bring the amendment in statute 19(5) and a new part as 19(5)(A) which allowed the Executive Council to recommend for extension of existing tenure of Vice Chancellor upto the age of 70 years. The decision further records that the Executive Council was further aware of the fact that as per Section 15(4), the Chancellor has to assent to it and specifically the decision records that as per the University Act of 2003, since the amendment could not take effect , unless the chancellor gives assent to it as per section 15(4), the Vice Chancellor was authorized to follow up the issue to expedite the matter to meet the Hon'ble Chancellor i.e., Hon'ble the Chief Justice of High Court of the Chhattisgarh.

62. Therefore, after the amendment was made by the Executive Council, it was forwarded to the Chancellor. The respondent University has placed on record a letter dated 22.11.2014 vide Annexure R-16 whereby Hon'ble the Chancellor has assented to such addition of sub-clause 19(5)(A) in the Statute. In the second part of decision on the agenda of 06.09.2014, the Executive Council recorded that in view of the above "amendment" of the statute made for extension of time, the recommendation was made to extend the tenure of Vice

Chancellor Prof. (Dr.) Sukhpal Singh beyond his initial period for the next 5 years or upto the age of 70 years whichever is earlier. Therefore, in compliance of sub-section (4) of Section 15, the assent was given by the Chancellor on 22nd November, 2014 though the Executive Council recorded that in view of the “amendment” made to the statute. The question, therefore, arises whether sub-section (4) of Section 15 can be given a go-bye ? In the considered opinion of this Court, the same could not have been made as the decision on Agenda itself records that the Executive Council was well aware of the fact to carry out the amendment, the Vice Chancellor was authorised to follow up the issue with Hon'ble the Chancellor for necessary compliance of section 15(4). Necessarily, therefore, the E.C., was also aware of the fact that the amendment to the statute could not take the effect unless the subsequent compliance of section 15(4) is carried out.

63. The last part of section 15 deals with the publication in the official gazette. As per sub-section (6) of section 15 the notification of the amended statute in compliance of section was made on 25.11.2014 vide Annexure P-8. So reading of section 15 of the Act of 2003 as a whole prescribed that the statute would be said to be amended finally after publication of it was made in the official gazette. The Executive Council in its meeting dated 06.09.2014 while making recommendation for the second tenure of the Vice Chancellor observed that in view of the “amended statute”, the recommendation was made to Hon'ble Chancellor for extension of period subject to publication of the said amendment in the official gazette of the State Government. In the given facts of the case, if the

amendment was still to be assented by the Chancellor, the statute 19(5)(A), could not have been taken cognizance by the Executive Council by taking into consideration the deeming sanction as Statute 19(5)(A) which came into being only on 25th November, 2014. There is nothing on record to show that after 06.09.2014 any fresh meeting of executive council was held by the University for any extension. The extension of tenure from 02nd December 2014 was made by the Hon'ble Chancellor pursuant to the recommendation made by the Executive Council in a meeting held on 06.09.2014.

64. The respondent University has heavily relied on a decision rendered in *Chandigarh Administration AIR 2011 SC 2956 (supra)* and would submit that the decision of the meeting was that the recommendation of the Executive Council regarding extension of tenure shall take effect subject to publication of the said amendment in the official gazette of the State Government and the Executive Council was quite sure that the amendment would take effect. It is contended by the University that since the Executive Council has already power for amendment in the statute and the amended statute allowed the recommendation for extension of the time, the same having been subject to the publication in the official gazette, the initial recommendation cannot be faulted.

65. If we read the said judgment of *AIR 2011 SC 2956 (supra)*, the facts would deviate from the present case. In such case, an advertisement was made for appointing Principal by direct recruitment and the requisite qualification of Ph.D., degree was prescribed as an eligibility criteria. When the advertisement was made, rules were not amended requiring

Ph.D., degree, but were sent to the Central Government for being notified in the name of President and were pending consideration. The Supreme Court in that case held that it was open to the Government to regulate the service conditions of the employees for whom service rules were made even if they were in draft stage and there was a clear intention to enforce those rules in the near future, as such, prescribing the qualification of Ph.D., for the Principal cannot be faulted. The Court in that case has laid down that since there was clear intention to enforce the recruitment rule in future and since they were made in consultation with the UPSC and in accordance with the UGC guidelines, the qualification could have been prescribed contemplating notification. Reading of the judgment further shows that it was with respect to the qualification prescribing Ph.D., for recruitment of the Principal. Reading of the facts would further show the principles lament that in exercise of the executive power, the administrative instructions could be issued. In such ratio, the advertisement prescribing Ph.D., for the post of Principal was saved with an observation that contemplated qualification was also prescribed in consultation with UPSC & UGC guidelines.

66. Therefore, primarily, it appears that the protection of Article 162 of the Constitution of India was extended. The Court in that case also laid down that in exercise of Executive Power, the administrative instructions could be issued from time to time in all matters which were not governed by any statute or rules made under the constitution or the statute. Herein in the instant case, specific existing statute as was existing

on 06.09.2014 did not provide for recommendation to extend the period of tenure by the Executive Council. To incorporate the amendment in the statute, the Act of 2013 itself provides for certain steps and lays down the procedure as to how it will be implemented and how the amendment in statute will come into effect.

67. The Statute contained in section 19 of the Act prescribes the mode of appointment and powers of Vice Chancellor. Sub-section (4) of Section 19 prescribes that Search Committee which is constituted shall submit a panel of three suitable persons for appointment to the position of Vice-Chancellor. Therefore, the appointment of the VC is to be made by the search Committee as per the Statute. Section 19(5)(A) which was proposed by the amendment prescribes the repetition period for Vice Chancellor which by implication over rides the direction of statute 19 for appointment of Vice Chancellor by the Search Committee. The Supreme Court in case of ***Chandra Kishore Jha v. Mahavir Prasad (1999) 8 SCC 266 (Para 17)*** laid down a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and no other manner. Likewise the Supreme Court in ***(2003) 9 SCC 731 State of Maharashtra v. Jalgaon Municipal Council*** reiterated the similar view at para 29 that if the statute requires a particular thing to be done in a particular manner then it shall be done either in that manner or not at all.

68. Here in this case, the statute 19(5)(A) which was proposed carves out a deviation to supersede the mandate of statute 19(2), (19(4) & 19(5) of the Act and as such, there cannot be

a deeming fiction to accept the proposition of respondent University that the University was sanguine of the fact that the proposed amendment in the statute would certainly be allowed as such the recommendation was made. Therefore, the ratio laid down in case of *Chandigarh Administration AIR 2011 SC 2956 (supra)* factually and naturally cannot be applied to this case and further the ratio of (*1999) 8 SCC 266* which lays emphasis on the statute that if the statutes are present then other mode is not possible to do certain Act holds the sway in favour of the appellant.

69. The University further averred that Regulation 8.3 of Hidayatullah National Law University Staff Regulations 2005 prescribed the mode of appointment of Vice-chancellor which reads as under:

> 8.3 Mode of Appointment
>
> (1) The Vice-Chancellor
>
> (a) The Vice-Chancellor shall be appointed by the Chancellor as per the provisions of Hidayatullah National University of Law Act, 2003.
>
> (b) On the basis of satisfactory services, after expiry of normal tenure of 5 years, the Executive Council may request the Chancellor to consider extension of the tenure. Such extension of tenure of the Vice-chancellor can be extended upto the age limit of 65 years.

70. The Agenda dated 06.09.2014 contains and makes a reference to HNUL Staff Regulation for amendment to the statute for extension of tenure of the Vice Chancellor. When we read the staff regulation, it purports that after expiry of the normal tenure of 5 years, the extension of the Vice Chancellor for a period upto 65 years can be considered. The staff regulation which is placed on record by the University

do not show that the age of 65 years was enhanced to 70 or the consideration of extension of tenure of Vice Chancellor was made “after the expiry of the normal tenure of 5 years”. Therefore, it is in direct conflict with the statute which was existing on the date and further the recommendation even under the staff regulation could only be considered after expiry of normal term. Here in this case, the Vice Chancellor had not completed his normal tenure as per the initial appointment and statute.

71. The Supreme Court in case of ***(2006) 12 SCC 583 Ispat Industries Ltd. v.Commissioner of Customs, Mumbai*** has held that if there are two possible interpretations of a rule, one which sub-serves the object of a provision in the parent statute has to be adopted. Paras 26, 27 & 28 of the said judgment are quoted below:

> “26. In our opinion, if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.
>
> 27. In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (the pure theory of law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer, the norm in the higher layer will prevail (see Kelsen's the General Theory of Law and State).
>
> 28. In our country this hierarchy is as follows:
>
> (1) The Constitution of India;
>
> (2) The statutory law, which may be either parliamentary law or law made by the

State Legislature;

(3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.;

(4) Administrative orders or executive instructions without any statutory backing."

72. Therefore, in the facts of this case, the staff regulations which were unamended on the date when the recommendation for extension of tenure period was considered did not factually support to the University to allow their emphasis and source of power on the basis of staff regulation.

73. Submission was also made by the petitioner appellant that the minutes did not reflect the true facts as if the proceedings never happened and the document was placed to consider the past record of the Vice Chancellor to consider his extension. On this issue, we are not inclined to go into further as it is not within the domain of this Court to sit as an appellate authority over the decision if any made by the Executive Council evaluating the individual performance of a person. This Court is only concerned as to whether on the date of recommendation Executive Council was vested with the power to act on the basis of existing statute or not.

74. The submission of the respondent University that the petitioner was not entitled to challenge the extension as he was not qualified to be appointed as Vice Chancellor has already been discussed in preceding paragraphs. The university canvassed the authenticity of the proceeding by

relying upon the minutes of the next meeting held on 22.08.015 wherein the minutes of the first resolution which is under controversy dated 06.09.2014 was accepted, we are not inclined to go into such issue and in view of the discussion made here-in-above and only on the ground that there cannot be an estoppel against the law, the submissions were considered. To put it otherwise, the statute on 06.09.2014 for extension of tenure of Vice Chancellor for the second term was not in the statute book and subsequent ratification in the meeting cannot be of any help. The reliance placed by the respondent University in ***(2010) 2 SCC 114 Dalip Singh v. State of Uttar Pradesh*** cannot be applied to the present case. In such case, the Supreme Court non-suited the petitioner as wrong statement was made to mislead the Court.

75. The "doctrine of pleasure" as has been prescribed in ***(2010) 6 SCC 331 Para 22 B.P. Singhal v. Union of India*** would make it clear that in a democratic set up governed by rule of law, the doctrine of pleasure in principle cannot be acted upon arbitrarily, capriciously or whimsically. Para 22 of the said decision is quoted below :

> "22. There is distinction between the doctrine of pleasure as it existed in a feudal set up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or

> whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good."

76. The Respondent/University further placed reliance in ***2008 (12) SCC 481*** (*K.D. Sharma v. SAIL);* ***(2013) 2 SCC 398 (****Kishore Samirte v. State of U.P)* to canvass the abuse of process of the Court by the petitioner. The University also relied on principles of ***(2007) 8 SCC Pg. 449*** *(Prestige Lights Ltd v. S.B.I.)* to canvass that there is suppression of facts on the part of appellant and argued that that the writ court may refuse to entertain the petition without entering into the merits. In the light of discussion made in foregoing paragraphs, averments of a misstatement of fact whether made will not be necessary in the facts of the case having held that the petitioner has the locus standi to challenge the impugned action of respondent University.

77. Reading of series of the facts would show that Hon'ble Chancellor was not apprised with the correct factual position by the University. It was the duty of the University to canvass the statute 15(4) and the fact of the date of amended statute. Thus after evaluating the entire facts on record and considering the principles laid down by the Supreme Court, we are of the considered opinion that the petitioner appellant was able to make out a case for interference by this Court in second part of Annexure P-1 dated 02.12.2014 whereby the period of respondent no.5 was extended.

78. Consequently, I am of the opinion that second part of Annexure P-1 dated 2nd December, 2014 was made on the

basis of the recommendation of the Executive Counsel Meeting dated 06.09.2014 over a statute of 19(5)(A) which did not borne into statute book on the date. Consequently, the same cannot be allowed to continue. Accordingly, Part-B of Letter dated 02nd December 2014 (Annexure P-1) is set aside.

PER SANJAY AGRAWAL, J

79. This appeal has been preferred by the writ petitioner (appellant herein) under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act 2006 read with Rule 158 (10) of the Chhattisgarh High Court Rules 2007 questioning the legality and correctness of the order dated 29.04.2016 passed in WP(S) No. 3714/2015 by the learned Single Judge whereby the petition, as instituted by the petitioner questioning the extension of existing tenure for a period of next five years of respondent No.5 (Prof. Dr. Sukh Pal Singh) as Vice-Chancellor of the Hidayatullah National Law University (for short 'the University'), has been dismissed.

80. The facts leading to this appeal are that one Dr. Sukh Pal Singh, respondent No.5 herein, was appointed as a Vice-Chancellor of the said University vide order dated 05.03.2011 for a period of five years or till the age of 65 years, whichever is earlier, as provided under the Statute No.19(5) read with Section 8 (2) of the Hidayatullah National University of Law Chhattisgarh Adhiniyam, 2003 (Act No. 10 of 2003) (hereinafter referred to as the Act of 2003). Based

upon the said appointment order, he assumed the Office on 30.03.2011 and started working as such. During his tenure period, an amendment was incorporated on 11.04.2014 in the said Statute No. 19(5) by enhancing upper age limit from 65 years to 70 years. Thereafter, a meeting of the Executive Council was convened on 06.09.2014, in which, the petitioner was also one of its members. According to the petitioner, the Agenda of said meeting was circulated only among some members of the said Council except the petitioner and few other members of the Council. It was put forth further by him that one of the Agendas for discussion was with regard to the amendment in the Statute No. 19(5) of the Law University for extension of the tenure of Vice-Chancellor on the basis of recommendation of the Executive Council. The Statute was thereafter assented by the Chancellor of the University after consultation with the State Government, as required under sub-section (4) of Section 15 of the Act of 2003 on 22.11.2014 and accordingly amended the said provision by way of issuance of the Notification dated 25.11.2014 by inserting clause (A) therein after the said Statute No.19(5), which reads as under:

"VICE CHANCELLOR

Appointment and the powers of the Vice Chancellor.-

(1) xxxxx xxxxxx xxxxx xxxxx

(2) xxxxx xxxxxx xxxxx xxxxx

(3) xxxxx xxxxxx xxxxx xxxxx

(4) xxxxx xxxxxx xxxxx xxxxx

(5) The term of the Vice Chancellor, except the first Vice Chancellor, shall be five years from the date on which he enters upon his office or until he attains the age of sixty-five

years (Now 70 years w.e.f. 11.04.2014), whichever is earlier.

(A) On the basis of satisfactory services, well before the expiry of normal tenure, the Executive Council of the University may recommend to the Chancellor of the University to extend the existing tenure of the Vice-Chancellor beyond his/her initial tenure for a period of next five years and the Chancellor shall have the power to grant such extension of the existing tenure of the Vice-Chancellor, provided that such extension of tenure of the Vice-Chancellor can be upto the age of seventy years only. Provided further, that upon the expiry of his/her term, the Vice-Chancellor shall continue to remain in office until his/her successor is appointed and enters upon his/her office."

81. According to further contention of the petitioner that since the aforesaid amendment came into force on 25.11.2014, much after the meeting of the Executive Council, which was held on 06.09.2014, therefore, at the relevant point of time, there was no occasion for discussion with regard to the extension of further period of five years of respondent No.5 as Vice-Chancellor of the University yet his tenure was extended based upon the recommendation of the Executive Council. The recommendation, as made by the Executive Council on the basis of said meeting held on 06.09.2014, is apparently fabricated one and *non est* in the eye of law, and therefore, no right whatsoever as such would accrue upon respondent No.5 and consequently, the order dated 02.12.2014 (Annexure P/1 to the writ petition) passed by the Chancellor of the University, i.e., respondent No.3 herein, extending the tenure of five years of respondent No.5 deserves to be quashed.

82. The Registrar and the Vice-Chancellor of the University, respondents No. 2 & 4 respectively contested the aforesaid claim of the petitioner by submitting, inter alia, that the petitioner was also one of the members of the Executive

Council and in his presence the alleged meeting was convened on 06.09.2014 and was duly approved by the Hon'ble Visitor on 16.09.2014 and only thereafter it was circulated among all the members of the Executive Council by memo dated 09.12.2014 though the copy of the minutes of the meeting was supplied to the petitioner by hand. It was contested further on the ground that the minutes of the meeting held on 06.09.2014 were placed in the Executive Council's meeting on 22.08.2015 where the same was duly approved even in presence of the petitioner without any objection being raised by him. In such an eventuality, the petitioner has no right whatsoever to question the propriety of the alleged meeting of the Executive Council held on 06.09.2014 and the petitioner is rather estopped in questioning the same. It has been contested further on the ground that since the petitioner was neither qualified for the post of Vice-Chancellor nor has made any candidature for the said post and as such, the petitioner cannot be held to be a person aggrieved so as to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for assailing the orders (Annexure P/1 & Annexure P/2).

83. Upon hearing the parties, the learned Single Judge, while relying upon number of decisions rendered by the Supreme Court, has arrived at a conclusion that since the petitioner has not claimed to be qualified for the said post of Vice-Chancellor nor he is claiming to be non-appointee for the said post, so as to hold that he suffered any legal injury owing to the issuance of the said order dated 02.12.2014 as

passed by the Chancellor of the University extending the initial tenure of respondent No.5 for a further period of five years on the basis of alleged recommendation of the Executive Council issued on account of resolution held on 06.09.2014. As a consequence, it cannot be held that the petitioner is a person aggrieved and would entitle to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for quashment of the order dated 02.12.2014 (Annexure P/1). It held further that the petitioner being the member of the Executive Council meeting, which was held on 06.09.2014, is rather estopped from questioning the validity of the said resolution as passed by the Executive Council in the said meeting, which led to the extension of tenure period of respondent No.5 and which was subsequently not only approved by the Hon'ble Visitor but was rectified in his presence in the meeting of Executive Council held on 22.08.2015 and in consequence the learned Single Judge has dismissed the petition.

84. Being aggrieved, the petitioner has preferred this appeal. Mr. Amrito Das, learned counsel appellant/petitioner submits that the order impugned as passed by the learned Single Judge holding that the petitioner is “not the person aggrieved” and is estopped from questioning the validity of alleged resolution passed by the Executive Council in its meeting held on 06.09.2014, is apparently contrary to law. He submits further that the case laws so referred and relied upon by learned Single Judge in arriving at such a conclusion are entirely distinguishable from the facts involved in the present case. He submits that the recommendation as made

by the Executive Council in its meeting held on 06.09.2014 (Annexure P/2) extending the tenure of further period of five years of respondent No.5 as Vice-Chancellor of the University cannot be upheld as the same was taken even in absence of the provisions prescribed under the said Statute No.19. According to him, the relevant provisions prescribed for recommending as such were in fact inserted only on 25.11.2014 by way of public notification by incorporating clause (A) to the said Statute No. 19 (5), i.e., much after the issuance of alleged recommendation by the Executive Council, therefore, under such circumstances, the order dated 02.12.2014 (Annexure P/1) passed by the Chancellor extending the initial tenure of respondent No.5 for a further period of five years, based upon such an illegal recommendation of the Executive Council, cannot be upheld.

85. On the other hand, Mr. Sumesh Bajaj, learned counsel for respondents No. 2 & 4 supported the order impugned by submitting that the order dated 02.12.2014 (Annexure P/1) was passed by the Chancellor of the Law University on the basis of recommendation of Executive Council in a meeting held on 06.09.2014 (Annexure P/2), in which, the petitioner was also one of its members, therefore, he would not be entitled to assail the validity of the same. He submits further that since the petitioner has not claimed to be qualified person to be appointed as Vice-Chancellor of the Law University nor he is claiming to be non-appointee for the said post, therefore, he has no locus standi to question the validity of the order dated 02.12.2014 (Annexure P/1) passed by the Chancellor of the Law University extending the tenure

of respondent No.5 as such, based upon alleged recommendation of the Executive Council.

86. We have heard learned counsel for the parties and perused the entire record carefully.

87. Based upon the aforesaid rival submissions of the parties, the questions which would arise for determination are as to,

(a) whether the petitioner can be held to be an aggrieved person and would be entitled to impugn the extension of respondent No.5 for a further period of five years as Vice-Chancellor or not?

(b) whether petitioner could be held to be estopped from questioning the propriety of the resolution of the Executive Council, which was held on 06.09.2014? and,

(c) whether further period of five years of respondent No.5 as Vice-Chancellor of the University could be made on the basis of the recommendation of the Executive Council issued on 06.09.2014, much before insertion of the said amendment in the Statute?

88. The learned Single Judge, after considering the rival submissions of the parties, has held that since the petitioner was one of the members of the Executive Council when its meeting was held on 06.09.2014, therefore, being a Member as such, he cannot question the authenticity of the said meeting based upon which the alleged recommendation for extension of tenure of respondent No.5 as Vice-Chancellor of the University was made to the Chancellor of the University

leading to the order dated 02.12.2014 (Annexure P/1). It held further that since the petitioner is neither qualified to be appointed as Vice-Chancellor of the University nor he is claiming to be non-appointee for the said post, therefore, he cannot be held to be person aggrieved. Consequently, the petition as framed was held to be not maintainable and accordingly it was dismissed.

89. The findings so recorded by the learned Single Judge dismissing the petition by relying upon several decisions rendered by the Supreme Court cannot be held to be sustainable as principles so laid down therein are entirely distinguishable from the facts involved in the present case.

90. The principle laid down in the matter of ***Dr. Umakant Saran*** vs. ***State of Bihar***, reported in **AIR 1973 SC 694,** as relied upon, is entirely on different footing. That is the case where the appellant Dr. Saran had made a complaint that he was senior to respondent No.5 (M.P.Sinha) and respondent No.6 (Narayan Verma). He was superseded by them illegally on the post of Lecturers in Surgery at Rajendra Medical College, Ranchi in disregard of his claim to be appointed as such. It was, however, found in the said matter that respondent No.6 (Narayan Verma) was not junior to him and as far as respondent No.5 (M.P.Sinha) is concerned, though he was junior to the appellant (Dr. Saran) but he and respondent No.6 both were found to have completed the minimum qualification of teaching experience while the appellant did not possess and/or fulfilled the said criteria. In that factual scenario, it was held that respondents No. 5 & 6

were eligible for appointment as Lecturers and under such circumstances, the appellant cannot be regarded as aggrieved person for the purpose of the relief that was claimed by him. Thus, the principles laid down in the said matter are not applicable in the present case, particularly, when the petitioner is trying to point out the fact that on the date of meeting of the Executive Council held on 06.09.2014 no discussion as such for recommending the tenure of respondent No.5 prior to amendment in the Statute was made and being a member of the Executive Council, he is certainly entitled to raise the said point.

91. Further reliance of learned Single Judge in the matter of ***D. Nagraj & Ors.*** vs. ***State of Karnataka and Ors.***, reported in **AIR 1977 SC 876 : (1977) 2 SCC 148** would also be of no use as in the said matter, the appellants were held the post of Village Accountants on hereditary basis under the Act known as Mysore Village Officers Act 1908 (hereinafter referred to as the Repealed Act, 1908), which was repealed subsequently by the Act known as Mysore Village Officers Abolition Act, 1961 (hereinafter referred to as the Abolition Act, 1961) abolishing the post of Village Accountants created under the said Act, 1908. After the enforcement of the said Abolition Act, 1961, Rules called as Mysore General Service (Revenue Subordinate Branch) (Village Accountant Cadre and Recruitment) Rules, 1961 (for brevity, the Rules of 1961) have been framed. Government of Mysore directed the Deputy Commissioners to appoint persons who are recruited under the said Rules of 1961 as Village Accountants by relieving the holders of their Officers,

like the appellants, holding the said post on hereditary basis under the said Repealed Act, 1908, which led to filing of the writ petitions questioning the constitutional validity of the said Abolition Act, 1961. The petitions so filed were ultimately dismissed by the High Court and affirmed further by the Supreme Court on 21.01.1966 passed in ***B.R.Shankara Narayana*** vs. ***State of Mysore,*** reported in **AIR 1966 SC 1571.** Pertinently to be observed here that during pendency of the said petitions, the State Legislature had enacted the Act known as Karnataka Land Revenue Act, 1964 and Section 16 of it provides for appointment of Village Accountants and the continuance of Village Accountants holding the said posts immediately before the enforcement of the said Act of 1964. After coming into enforcement of this Act, the earlier Rules of 1961 were repealed and replaced by another set of Rules called as Karnataka General Service (Revenue Subordinate Branch) (Village Accountants Recruitment) Rules, 1970 (hereinafter referred to as the Rules 1970) were made by the State Government and in pursuance thereof applications were invited by the Recruitment Committee to fill up the posts of Village Accountants and the appellants, who have admittedly not applied for their appointments as such have questioned the constitutional validity of the said Rules 1970. In that factual scenario, it was held that the petitioners who have not applied for their appointments on the post of Village Accountants, have no right whatsoever either to question the validity of the same or the appointment so made therein under the writ jurisdiction under Article 226 of the

Constitution of India. However, in the case in hand, the appellant's grievance is not for his own appointment on the post of Vice-Chancellor of the University. In fact, he is trying to impugn the validity of the alleged recommendation of the Executive Council made in its meeting held on 06.09.2014 on the ground that no discussion as such for recommending further tenure of respondent No.5 was considered nor such a recommendation could even be made in absence of any of the provisions in the Statute at the relevant point of time, i.e., 06.09.2014.

92. Likewise, the principles laid down in the matter of ***Dr. N.C.Singhal*** vs. ***Union of India and others*** reported in **AIR 1980 SC 1255** as relied upon by learned Single Judge is also distinguishable from the facts involved in the present case. That is the case where the appellant had prayed for his promotion on the post of super time Grade-II while questioning the promotional orders of respondents by submitting, inter alia, that they all were not eligible to be promoted to the post of super time Grade-II under relevant Rules known as Central Health Service (Amendment) Rules, 1966 (for short, the Amendment Rules, 1966). However, it was found therein that the appellant himself was not eligible to be promoted as such and observed further that even if the promotional orders of the respondents are struck down then also the appellant would not get any post for his promotion and, in such circumstances, it was held that the appellant was not competent enough to question their promotions.

93. As far as further reliance of the learned Single Judge in

the matter of ***State Bank of India*** v. ***Yogendra Kumar Shrivastava and others*** reported in **AIR 1987 SC 1399** is concerned, is also distinguishable one as in the said matter, the petitioners, who were Probationary Officers/Trainee Officers in the State Bank of India in Grade-I, were appointed on 30th and 31 st of October, 1979 whereas the concerned Order known as State Bank of India Officers (Determination of Terms and Conditions of Service) Order 1979 (hereinafter referred to as Order, 1979) had come into force w.e.f. 1st day of October, 1979 and which was required to be applied to the "Existing Officers" of the Bank as defined under para-3 (h) of the said Order, 1979. The petitioners, who were appointed much after the enforcement of the said Order 1979 and were fitted to the cadre of "Junior Management Grade" had claimed that since they were seniors to the erstwhile Officers Grade-II of the said cadre, therefore, entitled to be placed above such Officers Grade-II of the said cadre in the seniority list. The said claim was contested by the Bank mainly on the ground that since they were not "Existing Officers", as provided under para-3(h) of the said Order 1979, therefore, they would not be entitled to get such a relief over the "Existing Officers Grade-II" of the said cadre, i.e., " Junior Management Grade", who were admittedly the "Existing Officers" within the meaning of the expression defined under para-3(h) of the said Order 1979. The question was, therefore, involved in the said matter that whether petitioners, appointed as Probationary/Trainee Officers, are "Existing Officers" or not, that is to say, whether they were in the employment of the Bank immediately prior

to the appointed day, i.e., first day of October, 1979 so as to get the seniority as claimed by them. It was observed that since they were not “Existing Officers”, as provided under the said Order 1979 of the Bank, therefore, they cannot claim the seniority over the “Existing Officers Grade-II” of the said cadre, i.e., “Junior Management Grade”. In that factual scenario, it was held that since the petitioners, who were not in the cadre of Junior Management Grade, have no locus standi to challenge the benefit conferred on the Officers of the said cadre. The facts enumerated and discussed in the said matter are not only different but even not remotely concerned to the facts involved in the present matter.

94. Further reliance of learned Single Judge in the matter of ***Utkal University*** vs. ***Dr. Nrusingha Charan Sarangi and others*** reported in **(1999) 2 SCC 193** is also distinguishable. That is the case where the appellant University, i.e., Utkal University had issued an advertisement inviting applications for the post of Reader in Oriya. In pursuance to the said advertisement, respondent No.1, writ petitioner therein, appeared in the interview, which was held by the Selection Committee of the University but he failed and as per the recommendations made by the Selection Committee, one of the candidates, namely, Dr. Surendranath Dash was selected by the University. The respondent No.1, the writ petitioner having failed in the said interview, instituted a writ petition questioning the constitution of the Selection Committee by submitting, inter alia, that one of the members of the Selection Committee was biased in favour of the said selected candidates. The contention so made was

accepted by the High Court holding as such. Being aggrieved, the appellant University and the selected candidates had preferred appeals, in which, it was held that since the writ petitioner had participated in the said interview held by the Selection Committee, therefore, it was not open for him to question the constitutional validity of the said Committee. It held further that even the entire contention of the writ petitioner is accepted, he could not have been selected and, as such no legal right would accrue in his favour.

95. Whether or not the petitioner is a person aggrieved for questioning the alleged extension of initial tenure of five years of Respondent No.5 by way of the petition under Article 226 of Constitution of India, the learned Single Judge, by its impugned order, has relied further upon a decision rendered by the Supreme Court in the matter of "***Jasbhai Motibhai Desai*** vs. ***Roshan Kumar, Haji Bashir Ahmed and others*** reported in **(1976) 1 SCC 671 = AIR 1976 SC 578**". However, the matter is also on different footing. In the said case, the District Magistrate, after obtaining and entertaining the objection and as per direction of the State Government, had granted the No Objection Certificate to the respondent No.1 under Rule 6 of the Bombay Cinema Rules, 1954 (for short, the Rules of 1954). It is to be noted here that the appellant despite inviting objection by the District Magistrate prior to issuance of said certificate had not raised any objection to it. In such an eventuality, it was held that hid legal right was neither infringed nor had he suffered any legal grievance on account of issuance of such certificate. In

consequence, it was held that he is neither a person aggrieved nor has any locus standi to challenge the grant of such certificate. The principles so laid down in the said matter are entirely on different facts, and therefore, no reliance of it could be applied herein.

96. Further reliance of the learned Single Judge in the matter of ***Vinoy Kumar*** vs. ***State of U.P. and others*** reported in **(2001) 4 SCC 734** is also of no use as in that case a writ petition was filed by the Advocate on behalf of his client questioning the order dated 13.02.2001 whereby the learned District and Sessions Judge, Varanasi has transferred number of criminal matters. It was contended by him that by way of transfer of the case, the speedy trial of his clients case has been hampered due to the said order. It was, however, held therein that the petitioner being an Advocate had no locus standi to question the legality of the same in writ jurisdiction by virtue of Section 30 of the Advocates Act and would have no right to substitute himself for his client. The petition was, therefore, held to be not maintainable at his instance for want of any legal right of him. Likewise, the principles laid down in the matter of ***B. Srinivasa Reddy*** vs. ***Karnataka Urban Water Supply & Drainage Board Employees' Association & Others*** reported in **AIR 2006 SC 3106** are wholly inapplicable to the case in hand as the issue involved therein was for issuance of writ of quo warranto and against appointment of the appellant (B. Srinivasa Reddy) as a Managing Director of the Board by the Karnakata Urban Water Supply and Drainage Board Employees' Association, the writ petitioner (respondent No.1) on the ground that by

virtue of Section 7(1)(d) of the Karnataka Water Supply and Drainage Board Act, 1973, the appellant being the Chief Engineer of the Board could not have been appointed as such. The petition so filed was allowed holding that the appellant cannot be appointed as a Managing Director of Karnataka Urban Water Supply and Drainage Board. The said order was affirmed further by the Appellate Court in an intra Court appeal preferred by the appellant, but, it was reversed by the Supreme Court by observing that since the writ petitioner, i.e., the Association was not a registered Association under the Trade Union Act, therefore, the writ petition filed by the said unregistered Association cannot be held to be maintainable.

97. Further reliance of the learned Single Judge in the matter of ***Bihar Public Service Commission and another*** vs. ***Shiv Jatan Thakur and others*** reported in **AIR 1994 SC 2466** is also distinguishable from the facts involved in the present case. It is true, as held in the said matter that a Member of the Union Public Service Commission has no right to question the validity or correctness of the functions performed by the Commission as a body while he was one of its members and the discretionary relief provided under Article 226 of the Constitution of India cannot be invoked by such member of the Commission. However, in the instant case, the petitioner, though was one of the members of the meeting of the Executive Council held on 06.09.2014 whereby a resolution was passed recommending to the Chancellor of the University for extension of tenure of respondent No.5 as a Vice-Chancellor of the University, but it

was the contention of him that in the said meeting the alleged point for the said recommendation was not in the Agenda No.4 yet it was inserted even in absence of any of the powers provided to the Executive Council at the relevant point of time as the relevant provision authorising the Executive Council for making such a recommendation was inserted much after the said meeting, i.e., on 25.11.2014.

98. Mr. Bajaj, by placing his reliance upon the decision rendered in the matter of ***Dalip Singh*** vs. ***State of Uttar Pradesh and others*** reported in **(2010) 2 SCC 114,** contended that the person who approached the Court on a false plea would not be entitled to seek any relief, and therefore, petition as framed by levelling false/fabricated allegation in respect of passing alleged Agenda No.4 despite participating the said meeting on 06.09.2014 deserves to be dismissed on this count alone. However, contention so made is not acceptable in view of the facts involved in the instant matter and as analysed herein above. Under such circumstances, the petitioner being a member of the Executive Council can be held to be a person aggrieved to question the validity of the same.

99. At this juncture, the principles laid down in the matter of ***Gadde Venkateswara Rao*** vs. ***Government of Andhra Pradesh and others*** reported in **AIR 1976 SC 828,** as relied upon by Mr.Das, are to be taken into consideration. Although the said decision was taken into consideration by the learned Single Judge at paragraph 9.3 of its order impugned but misunderstood the principles laid therein in its

proper perspective, while referring only to some portion of para 8 of the said judgment. If the said judgment as a whole is considered, then it would rather support the petitioner's locus standi to question the order of the Chancellor extending the extension period of respondent No.5. In the said matter, a dispute ensued between two villages, namely Dharmajigudem and Lingapalem in relation to the location of Primary Health Center. The State of Andhra Pradesh, vide its order dated 18.04.1963 directed that the said Center should be located permanently at Lingapalem village in accordance with the resolution of the Panchayat Samithi dated 29.05.1961 as the resolution was passed on 28.05.1960 by the Panchayat Samithi where it was resolved that the Primary Health Center should be permanently located at Dharmajigudem, which was duly approved by the Government of Andhra Pradesh. However, the said resolution dated 28.05.1960 was cancelled by the Panchayat Samithi later on as it was not passed in accordance with the relevant rules and resolved to locate the same at Lingapalem. Pertinently to be noted herein that the representatives of the Dharmajigudem assured the representatives of Lingapalem and accorded unanimously to have located the Primary Health Center at Lingapalem. The resolution so passed by the Panchayat Samithi was not accepted by the Government of Andhra Pradesh vide its order dated 07.03.1962 for the reasons that the Center was functioning permanently at the place of Dharmajigudem, therefore, it could not be shifted to any other place unless the Panchayat Samithi resolved 2/3rd majority for the same.

The said order dated 07.03.1962 was reversed by the State Government vide its impugned order dated 18.04.1963 as it was realised by the Government that the said previous order was passed under some mistaken facts that the Center was functioning permanently at Dharamajigudem. The order so passed was questioned by the appellant, who was the President of the Village Panchayat of the said Dharamajigudem by filing a writ petition under Article 226 of the Constitution of India. A preliminary objection was, therefore, raised by the State Government regarding its maintainability on the ground that since the appellant had no personal right in the matter with regard to the location of the said Center, and therefore, he had no locus standi to maintain the writ petition. The preliminary objection so raised was rejected by observing at para -8 as under:

"8. The first question is whether the appellant had locus standi to file a petition in the High Court under Article 226 of the Constitution. This Court in Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal dealing with the question of locus standi of the appellant in that case to file a petition under Article 226 of the Constitution in the High Court, observed:

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right …. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

Has the appellant a right to file the petition out of which the present appeal has arises? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dhamajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said committee collected Rs.10,000 and

> deposited the same with the Block Development Officer. The appellant represented the village in all its dealing with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Centre at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the committee, and, the treatment meted out to him by the authorities concerned support the inference that he was authorized to act on behalf of the committee. The appellant was, therefore, a representative of the committee which was in law the trustees of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Article 226 of the Constitution. This Court held in the decision cited supra that "ordinarily" the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest: it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable."

100. In view of the foregoing discussions, the findings so recorded by the learned Single Judge based upon the aforesaid principles, which are wholly inapplicable, as observed herein above, holding that the appellant was neither a person aggrieved nor has locus standi to question the order dated 02.12.2014 (Annexure P/1) as passed by the Chancellor of the University extending the initial tenure of respondent No.5 for a further period of five years as Vice-Chancellor of the University, based upon the alleged recommendation (Annexure P/2) of the meeting of the Executive Council, cannot, therefore, be held to be sustainable and accordingly, I answer the questions '(a) and (b)' as such. The order impugned in this regard is accordingly set aside and it is held that the petition as framed and instituted is maintainable.

101. We shall now examine the order dated 02.12.2014

(Annexure P/1) as passed by the Chancellor of the University extending the initial tenure of Respondent No.5 (Dr. Sukh Pal Singh) for a further period of five years on the basis of the alleged recommendation of the Execution Council issued on the basis of the resolution passed on 06.09.2014 (Annexure P/2), is sustainable or not?

102. Admittedly, respondent No.5 (Prof. Dr. Sukh Pal Singh) was appointed as Vice-Chancellor of the University vide order dated 05.03.2011 for a period of five years or till the age of 65 years, whichever is earlier, as provided in terms of Statute No.19(5) read with Section 8(2) of the Act of 2003 and accordingly he assumed his Office on 30.03.2011 and started working as such w.e.f. 30.03.2011. It is also not in dispute that during his tenure, an amendment was incorporated on 11.04.2014 in the Statute of the University by enhancing the upper age limit from 65 years to 70 years (without extending the tenure period of five years) and by virtue of the said amendment, the Vice-Chancellor can perform his duty as such for a period of five years or till the age of 70 years, whichever is earlier. Upto this, there is no dispute, but quarrel starts only when the meeting of the Executive Council was convened on 06.09.2014 which led to recommendation to the Chancellor of the Law University for extension of initial tenure of Dr. Sukh Pal Singh (respondent No.5) as Vice-Chancellor for a further period of five years. According to the petitioner, there was no point in the Agenda No.4 for the discussion as such on the date of the said meeting leading to the alleged recommendation of his tenure period as such and it was rather fabricated and manipulated

and the moment he came to know about it on 21.08.2015 he raised an objection before the Executive Council on 22.08.2015 and also submitted a detailed representation in this aspect before the Registrar of the University on 24.08.2015 requesting him to apprise the Chancellor of the Law University for the alleged illegality in order to save the reputation of the University. But the petitioner did not get any response, which compelled him to filing of the instant petition as no remedy as such for correction of such an illegality is available to him.

103. According to the specific averment in the petition, a meeting of the Executive Council convened on 06.09.2014 was, in fact, in relation to incorporate the amendment in the Statute No. 19(5) of the Staff Regulation of the University for extension of tenure of Vice-Chancellor for a period of five years based upon his satisfactory service and not for the consideration of extension of Dr. Sukh Pal Singh, respondent No.5 herein, as the Vice-Chancellor of the Law University. In absence of any provision as such, no recommendation as such for the extension of tenure period of respondent No.5 could even be made in the said meeting held on 06.09.2014 (Annexure P/2). It was contended by Mr. Das, learned counsel for the appellant that after convening the meeting of the Executive Council on 06.09.2014, an amended notification was published on 25.11.2014,, as mentioned herein above, by the In-Charge Registrar Mr. R.L. Masiya, by which, the said amendment for extension of tenure of Vice-Chancellor for a period of five years, as discussed in the meeting of the Executive Council on 06.09.2014, was

brought in the Statute No. 19(5) of the Staff Regulation of the University by inserting clause (A) therein.

104. At this juncture, the provisions prescribed under Section 15 of the Act of 2003 is to be noted, which reads as under:-

> **"15. Statutes.**- (1) The Statutes of the University shall contain such instructions, directions, procedures and details as are necessary to be laid down under and in accordance with the provisions of this Act.
>
> (2) The Statutes as contained in the Schedule to this Act as amended from time to time, shall be binding on all authorities, officers, teachers and employees of the University and persons connected with the University.
>
> (3) Executive Council shall have all powers to make any amendments in the Statutes contained in the Schedule to this Act:
>
> Provided that the Executive Council shall not amend Statute affecting the constitution, status or power of any authority of the University without affording to such authority a reasonable opportunity of making a representation on the proposed changes.
>
> (4) Any amendments to the Statutes, whether by adding, deleting or in any other manner, shall not take effect unless the Chancellor has, after consultation with the State Government, assented to it; and he may after the said consultation and on being satisfied that assent be not given, withhold assent or return the proposal for amendment to the Executive Council for reconsideration in the light of observation, if any, made by him.
>
> (5) Notwithstanding anything contained in sub-section (3) or sub-section (4) the Chancellor shall have power to amend, after consultation with the State Government whether by adding, deleting or in any other manner, the Statutes contained in the Schedule.
>
> (6) An amendment to the Statutes shall come into force on the date of its publication in the Official Gazette."

105. By virtue of sub-section (3) of the aforesaid provision, the Executive Council shall have all powers to make any amendment in the Statute contained in the Schedule to this Act of 2003. Based upon it, the Executive Council of the University recommends, the following amendment in Statute No. 19(5) by adding clause (A) as under:

> “19(5)(A) On the basis of satisfactory services, well before the expiry of normal tenure, the Executive Council of the University may recommend to the Chancellor of the University to extend the existing tenure of the Vice-Chancellor beyond his/her initial tenure for a period of next five years and the Chancellor shall have the power to grant such extension of the existing tenure of the Vice-Chancellor, provided that such extension of tenure of the Vice-Chancellor can be upto the age of seventy years only. Provided further, that upon the expiry of his/her term, the Vice-Chancellor shall continue to remain in office until his/her successor is appointed and enters upon his/her office.”

106. Pertinently to be noted here that although the aforesaid recommendation was made by the Executive Council in exercise of the powers provided under sub-section (3) of Section 15 of the Act of 2003 but it shall take its effect only when it is assented and notified as per the provisions prescribed under sub-sections (4) and (6) of the said Act of 2003. So, the alleged amendment though proposed as such on 06.09.2014 but has not come into force for want of its assent as well as for issuance of notification for its enforcement, as required under the said provisions of the Act of 2003.

107. Having realised the aforesaid legal position, the Executive Council has decided on 06.09.2014 while making and/or proposing the aforesaid amendment to the Statute that a request may be made to the Hon'ble the Chief Justice, High Court of Chhattisgarh and the Chancellor of the University for its assent and it has also been decided that the Vice-Chancellor (Dr. Sukh Pal Singh, though not mentioned by name) may personally meet the Chancellor of the University in order to expedite its assent.

108. After authorising the Vice-Chancellor of the University as such, the Executive Council simultaneously while acting upon such an amendment, which is yet to be assented and notified under the Act of 2003, recommended the name of Dr. Sukh Pal Singh (respondent No.5) to Hon'ble the Chief Justice, High Court of Chhattisgarh and Chancellor of the University to extend his existing tenure beyond his initial tenure for a period of next five years or upto the age of seventy years, whichever is earlier, subject to publication of the said amendment in the Official Gazette of the State Government.

109. What is reflected from the aforesaid decision of the Executive Council is that on 06.09.2014 the Vice-Chancellor of the University, namely, Dr. Sukh Pal Singh was authorised to meet the Chancellor of the University in order to expedite the assent of the said “proposed amendment” in the Statute. Not only this, the Executive Council, even prior to its amendment in the Statute, acted upon it and, recommended the name of Dr. Sukh Pal Singh, respondent No.5 herein, for extension of his existing tenure beyond his initial tenure for a period of next 5 years or upto the age of his seventy years, whichever is earlier, subject to Notification of the said “proposed amendment” in the Official Gazette of the State Government.

110. The entire aforesaid decision as taken by the Executive Council is apparently beyond its powers. The so-called “amendment” was just made by the Executive Council in its meeting held on 06.09.2014 and was required to be assented first by the Chancellor of the University, as per

provisions prescribed under sub-section (4) of Section 15 of the Act of 2003, whereas surprisingly on the same date, i.e., on 06.09.2014, the Vice-Chancellor of the University (Dr. Sukh Pal Singh) was not only authorised to meet the Chancellor of the University personally for the purposes of expediting the said assent, but his name as such was recommended simultaneously based upon the so-called "proposed amendment" on 06.09.2014 itself. However, the powers in this regard are yet to be vested upon the Executive Council but even in absence of any power conferred upon it as such, the alleged recommendation for extension of respondent No.5 was made. Why the Executive Council was so hurry? Why the Executive Council proceeded in such a manner despite knowing fully the said legal position? Why the existing Vice-Chancellor of the University alone was authorised to meet the Chancellor of the University for assent of the so-called "proposed amendment" which is going to be benefited to him only? Why could not have waited at least for issuance of publication, as required under sub-section (6) of Section 15 of the Act of 2003? All these acts of the Executive Council are not supported by the law, and therefore, illegal action of theirs cannot be held to be legalised subsequently by virtue of issuance of Notification on 25.11.2014 under sub-section (6) of Section 15 of the Act of 2003. If such an act of the Executive Council is appreciated, the entire provisions of the Statute would have become redundant. The conduct of the Executive Council in such an eventuality cannot be appreciated and they should have rather acted strictly in accordance with law

and should have refrained from doing anything at the cost of the reputation of the University.

111. Pertinently to be observed here that an amendment to the Statute shall have to come into force of law only on the date of its publication in the Official Gazette, as required under sub-section (6) of Section 15 of the Act of 2003. Clause (A), as mentioned herein above, has been brought in the Statute No.19(5) on 25.11.2014 when the said Notification was issued by way of publication (Annexure P/8) in the Official Gazette. The Executive Council of the University was thus empowered w.e.f. 25.11.2014 to recommend the Chancellor of the University for extension of tenure of Vice-Chancellor beyond his/her initial tenure for a period of next five years, based upon his/her satisfactory services and Chancellor shall have the power to grant such an extension of tenure of the Vice-Chancellor only w.e.f. 25.11.2014 when the above amendment was inserted in the Statute by way of the said Notification.

112. At this juncture, the contention of Shri Bajaj based upon the principles laid down in the matter of ***Chandigarh Administration through The Director, Public Instructions (Colleges), Chandigarh*** v. ***Usha Khetrapal Waie and others*** reported in **AIR 2011 SC 2956** that the alleged recommendation of the Executive Council cannot be held to be invalid although it was issued prior to issuance of said Notification dated 25.11.2014 making the proposed amendment to the part of the Statute is, however, noted to be rejected as the principles laid down

therein are entirely distinguishable from the facts involved in the case in hand. That is the case where the administrative instructions prescribing Ph.D. degree as an eligibility criteria for recruitment to the post of Principals issued in absence of valid rules cannot be held to be invalid by observing that such an administrative instructions could be issued while exercising its executive powers. However, such a fact is not involved in the present case, therefore, the principle laid down in the said case is not applicable in the present one.

113. As we analysed herein above, the alleged recommendation was made by the Executive Council to the Chancellor of the Law University on 06.09.2014 for extension of existing tenure of respondent No.5 as Vice-Chancellor for a period of next 5 years, i.e., much prior to the incorporation of the said amendment to the Statute. Therefore, such recommendation of the Executive Council issued on the basis of its meeting held on 06.09.2014 much prior to the incorporation of the alleged amendment to the Statute cannot be taken into consideration as a valid recommendation for extension of existing tenure of respondent No.5 as Vice-Chancellor of the University for a period of next five years. Consequently, I answer the question (c) in negative by holding that the order dated 02.12.2014 (Annexure P/1) as passed by the Chancellor of the University extending existing tenure for a period of next five years of respondent No.5 as Vice-Chancellor of the University or until he attains the age of seventy years, whichever is earlier, based upon such an illegal recommendation, dated 06.09.2014 of the Executive Council cannot be upheld and as such, no right whatsoever

would confer upon him.

114. Both of us have concurrently arrived at a finding that the petitioner has locus standi to file the petition as otherwise it may end up in seeming as unjust and the Court cannot avoid to address the problem. Further it is held that recommendation made on 06.09.2014 by the Executive Council to extend the period of Vice Chancellor Prof. (Dr.) Sukpal Singh of the University beyond his initial tenure for a further period of 5 years or until he attains the age of 70 years, whichever is earlier, cannot be sustained as the Chancellor was not apprised with the actual facts by the University. So the same cannot be continued despite the fact that the Vice Chancellor has almost completed his major part of extended period of tenure. Accordingly, Part-B of Annexure P-1 dated 02nd December, 2014 is set aside. In the result, the appeal is allowed and the consequence will follow. No order as to costs.

Sd/-
GOUTAM BHADURI
JUDGE

Sd/-
SANJAY AGRAWAL
JUDGE

Rao /
Anjani