CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 539/2013
and
No.679/2013

Friday this the 10th day of July, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mr. R.Ramanujam, Administrative Member

Dr. B.Ashok, I.A.S
S/o Sri B.Balasundaram
aged 40 years, Vice Chancellor
Kerala Veterinary and Animal Sciences University
Pookode, Wayanad District
residing at Camp House
Kerala Veterinary and Animal Sciences University,
Kalpetta PO, Wayanad-673 576.

...Applicant in both cases

(By Advocate M/s OV Radhakrishnan (Senior Advocate) with Advocate Mrs. K.Radhamani Amma and Advocate Mr. Antony Mukkath ***in both cases)***

Versus

1. The State of Kerala, represented by its Chief Secretary, Secretariat, Thiruvananthapuram .695001.

2. Union of India, represented by its Secretary Ministry of Home Affairs, New Delhi-110001.

3. Dr. K.M.Abraham, IAS (Enquiry Officer appointed as per GO dated 8.11.2012 in the matter of inquiry against the applicant) Principal Secretary
Higher Education Department,
Government of Kerala, 3rd floor
Secretariat Annex, Thiruvananthapuram-695001.

...Respondents in OA 539/2013

1. The State of Kerala, represented by its Chief Secretary, Secretariat, Thiruvananthapuram .695001.

2. Union of India, represented by its Secretary
Ministry of Home Affairs, New Delhi-110001.

3. Chief Secretary to Government
General Administration (Special A) Department,
Government Secretariat, Thiruvananthapuram. 695001.

...**Respondents in OA 679/2013**

(By Advocates Mrs. Rekha Vasudevan & M. Rajeev, Government Pleaders for Respondent No.1 and Advocate Mr. N.Anil Kumar, Senior Panel Central Govt. Counsel for Respondent No.2 in OA No. ***539/2013)***

(By Advocates Mrs. Girija Gopal (Spl. Govt. Pleader) & M,Rajeev , Government Pleader for Respondents 1 & 3 and Mr. N.Anil Kumar, Senior Panel Central Govt. Counsel for Respondent No.2 in OA No. ***679/2013)***

This application having been finally heard on 12.6.2015, the Tribunal on 10.7.2015 delivered the following

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

These applications are filed by the applicants challenging the disciplinary proceedings initiated against him contending that the first respondent, the State Government have no jurisdiction, power or authority to initiate disciplinary action against him during his tenure as Vice Chancellor on the alleged violation of the provisions of All India Service (Conduct) Rules. The case of the applicant can be stated in brief as follows:-

2. The applicant is a member of the Indian Administrative Service (IAS) [KL-1998] allocated to Kerala Cadre. While holding the post of District Collector, he was selected for Central Deputation and was posted as Deputy Director, Lal Bahadoor Shasthri National Academy of Administration, Mussorie and later he was transferred and posted as

Private Secretary, Ministry for Agriculture, Food and Civil Supplies, Government of India. He was appointed as Vice Chancellor, Kerala Veterinary and Animal Sciences University [KVASU for brevity], w.e.f. 29.10.2012 on the recommendations of the Government in exercise of the powers conferred by Section 12(5) of KVASU Act. The term of appointment is fixed for a tenure of five years from the date he entered upon his office. He assumed the office of Vice Chancellor on 03.01.2011. The first respondent later decided to recall the applicant from the post of Vice Chancellor, KVASU stating administrative reasons. That was challenged by the applicant before the Hon'ble High Court. Though, the Writ Petition was dismissed, the Writ Appeal No. 347/12 filed by the applicant was allowed by the Division Bench of the Hon'ble High Court declaring that the impugned orders recalling the applicant from the post of Vice Chancellor is malafide and illegal. Based on the direction issued, restoring the applicant to the post of Vice Chancellor, he assumed charge as such. The applicant published an article titled "*Modi Sivagiriyil vannalentha*" in Kerala Koumudi dated 24.04.2013. Alleging that the applicant has violated the code of conduct, etc. Government initiated action against the applicant based on the article (Annexure A-7) written by the applicant and published in Kerala Koumudi dated 24.04.2013. Memo has been issued to the applicant to show cause why disciplinary action under the provisions of All India Service (D&A) Rules, 1969 should not be taken.

3. In OA 679/2013, the applicant contends that as long as he is holding the post of Vice Chancellor, State Government cannot exercise any

disciplinary control over the applicant for violation of All India Service (Conduct) Rules and so he cannot be proceeded against by the first respondent - the State Government. The disciplinary power can be exercised only by the Chancellor in accordance with Section 12(8) of the Act. The Chancellor is a statutory functionary different from the Governor. The Chancellor has to act strictly in accordance with the provisions of the Act. The government is totally powerless to take disciplinary action or to exercise any disciplinary control over the applicant in respect of the action alleged to have been committed by him in his capacity as the Vice Chancellor. Therefore, the proceedings initiated against the applicant based on Annexure A-8 Articles of Charge is liable to be quashed. Annexure A-8 has been issued by the Chief Secretary to Government and not one issued by the Government or by the Chief Secretary as an authority empowered to authenticate orders and instruments issued by the Government. The Chief Secretary of a State is not empowered to initiate proceedings to impose penalties on a member of All India Service. The appointment of the applicant as Vice Chancellor on the recommendation of the Government cannot be characterized as an appointment on deputation basis on any of the contingencies contemplated under Rule 7(b) (i) to (vi) of the All India Services (Discipline and Appeal) Rules, 1969. The absence of the applicant from IAS consequent on his appointment as Vice Chancellor on the recommendation of the Government in a University controlled by the Government can only be brought under " in any other case" covered by Clause (vii) of Rule 7(b) of the AIS (D&A) Rules, 1969 under which the

Central Government alone shall be competent to institute disciplinary proceedings. The appointment of the applicant as Vice Chancellor is not on deputation. The post of Vice Chancellor is not a deputation post under the Act. It is exclusively governed by the provisions of KVASU Act. Though, the applicant holds his lien in the IAS, he is not on deputation, as the first Vice Chancellor of the University. Since the appointment of the applicant to the post of Vice Chancellor is for a fixed tenure, it cannot be treated as one on deputation for the purpose of exercising disciplinary control and power by the State Government in respect of a person appointed as Vice Chancellor. The appointment of the applicant to the post of Vice Chancellor is not one falling under Rule 6 of Indian Administrative Service (Cadre) Rules, 1954. Rule 6(2)(ii) of the IAS (Cadre) Rules enables a Cadre Officer to be deputed for service under an autonomous body not controlled by the government and not otherwise. The 3rd respondent has absolutely no disciplinary power over the applicant and as such Annexure A-8 issued by the 3rd respondent is liable to be set aside. Section 9(9) of the Act empowers the Chancellor to remove Vice Chancellor from office by an order in writing of charges of mis-appropriation, misconduct, etc. The provisions of that Act do not contemplate conduct of an enquiry by the State Government during the tenure of a Vice Chancellor in respect of any mis-conduct falling under AIS (Conduct) Rules alleged to have been committed by the applicant in his capacity or in the discharge of duties and functions of Vice Chancellor. During his tenure as Vice chancellor, he is irrefutably within the disciplinary control of the Chancellor and as such

Annexure A-8 charge is to be quashed.

4. In OA 539/2013 the applicant contended that he had received Annexure.A.5 a petition filed by Shri Suvernakumar the Chairman of Secular National Dravid Party and on receipt of that petition he made a preliminary inquiry and based on the same he submitted a preliminary confidential report to the Chancellor of the University pointing out the irregularities mentioned in Annexure.A.5 so as to enable the Chancellor to take a right decision in the matter. Annexure.A.6 is the preliminary report mentioned above. On receipt of the said report the Chancellor called for a report from the Government. The Government reported back to the Chancellor that a prima facie reading of the letter (Annexure. A6) would show that there is reasonable suspicion that the report was given by extraneous consideration. The applicant was thereafter served with a copy of the order intimating him that his action in sending a letter to the Chancellor of the University containing allegations against fellow officer of IAS is malicious and that it would amount to violation of the code of conduct unbecoming of an officer and also violation of AIS (Conduct) Rules. An inquiry was got conducted in that matter through the Principal Secretary, Higher Education Department as ordered by the Government. Thereafter the applicant was served with a letter dated 19.11.2012 calling upon him to furnish in writing to the office of the third respondent remarks if any the applicant may have in the matter of the inquiry. On receipt of that letter the applicant submitted a detailed representation pointing out that he was appointed as Vice Chancellor of KVASU and on his appointment as

Vice Chancellor he is governed by KVASU Act. Subsequently the applicant was served with the Articles of Charge dated 13.5.2013 with a covering letter. In Annexure.A.11, the articles of charge the applicant has been imputed with misconduct. The applicant contends that Anenxure.A.11 articles of charge and the proposed inquiry in respect of those charges, issued and ordered by the Ist respondent, are without jurisdiction, and as such it is to be interdicted by this Tribunal.

5. In OA 539/2013 also the applicant has contended that his appointment as Vice Chancellor cannot be characterized as an appointment on deputation basis and that his absence from the Indian Administrative Service consequent on the appointment as Vice Chancellor on the recommendation of the Government, in University controlled by the Government, can only be brought under "in any other case"covered by clause VI of Rule 7 (b) of AIS (D&A) Rules, 1959 under which the Central Government alone shall be competent to institute disciplinary proceedings. Since the applicant was appointed as Vice Chancellor for a fixed tenure on the recommendation of the government under KVASU Act the applicant does not fall under Clause VII of Rule 7(b) of AIS (D&S) Rules. The applicant further contends that his appointment to the post of "Vice Chancellor" is not falling under Rule 6 of IAS (Cadre) Rules. Rule 6(2)(iii) of the IAS (Cadre) Rules 1959 enables a cadre officer to be deputed for service under an autonomous body not controlled by the Government and not otherwise. Annexure .A.11 is the product of an official bias and not exercised by the bonafide exercise of power by the government. It is also

contended that the conduct of the applicant in forwarding a preliminary confidential report in respect of the allegations made in Annexure A5 complaint filed by a person in public interest to the higher authority which was not intended to be known to the public cannot be termed as misconduct. The allegation that Annexure.A.6 complaint was designed to misguide the Chancellor to malign the character of his predecessor is denied by the applicant. The Vice Chancellor under Section 12(5) of KVASU Act does not fall under any of the categories enumerated under Rule 7(b)(i) to (vii). The communication between the Vice Chancellor and the Chancellor out of fiduciary relationship is exempted to be disclosed under Right to Information Act unless it is warranted in public interest. Since it pertains to the business of the university it is confidential and privileged in nature and therefore it cannot be made the subject matter of an inquiry which would lead to a publication of the confidential report. Annexure. A.-11 charge is imprecise and does not indicate which conduct rule or which provision of KVASU Act was violated or contravened by the applicant. The charge that the applicant acted ultra vires of the powers vested in him as the Vice Chancellor has no factual foundation and it only exhibits vindictive attitude on the part of the Government.

6. The respondents resisted the application raising the following contentions:

6.1 The applicant was on Central deputation as Private Secretary to a Minister. He was recalled by the State Government on the advice of the Council of Ministers for being appointed as the first Vice Chancellor of the

KVASU and accordingly the service of the applicant was placed at the disposal of the Animal Husbandry Department of the State of Kerala for being appointed as Vice Chancellor of KVASU and later he was appointed as Vice Chancellor of KVASU as per notification dated 29.10.2010 issued by the Governor. The Government later decided to recall the applicant from the post of Vice Chancellor due to administrative reasons with the permission of the Governor.

6.2 The applicant while being a public servant caused an article to be published criticizing the policies of government and making remarks on politicians. He has done acts of gross indiscretion and violated all sense of decency and propriety by publishing an article titled *"modi sivagiryil vannalentha"* Annexure.A7 in a Malayalam daily Kerala Kaumudi dated 24.4.2013. By writing the article applicant has criticized the policies of the government, made insidious remarks against political parties and political leaders and subjected various present and past leaders of political parties and heads of Government to ridicule". The state government examined the case in detail and found that the applicant has violated Rule 3(1) and Rule 7 of All India Services (Conduct) Rules, 1968 and thus initiated disciplinary action against the applicant for violation of Rule 3(i) and Rule 7 of AIS (Conduct) Rules, 1968. Articles of charges and statement of imputation (Annexure.A8) were served to the applicant. The State government is undisputedly the cadre controlling authority for the IAS officers in the State. It is applicable to the applicant as well. The contention that the State Government is incompetent to institute disciplinary proceedings is

untenable. Equally untrue is the contention that as the applicant is the Vice Chancellor, the Chancellor alone has jurisdiction to institute such proceedings. All India Service (Conduct) Rules, 1968 is one under sub section (i) of Section 3 of All India Services Act, 1951. It applies to members of the Indian Administrative Service. The State Government is clearly the disciplinary authority in the case of the applicant as he is governed by Rule 7(b)(i) of AIS (Conduct) Rules. The applicant was deputed to an authority or organization set up by an Act of the legislature of the State. The State Government is the cadre controlling authority for the IAS officers in the State. The disciplinary action initiated against the applicant is only for violation of AIS (Conduct) Rules and not pertaining to any matter connected with the university.

6.3 The applicant while holding the post as Vice Chancellor had published an article in Malayala Manorama dated 10.10.2011 criticizing the IAS officers and the functioning of the entire government machinery. The applicant had used highly objectionable language against the IAS officers. The contention raised by the applicant that he cannot be governed by the rules under the All India Service Act, 1951 is untenable. The State Government is the disciplinary authority as the applicant is governed by Rule 7(b)(i) as he is deputed to an authority set up by an Act of the legislature of the state, KVASU Act, 2010. The applicant's cadre controlling authority is not changed and it is the State Government as long as the applicant is serving in the State. The allegation against the applicant is violation of the provisions in Rule 3(i) of All India Services

(Conduct) Rules, 1968 which warrant disciplinary action against him as contemplated under Rule 10 of AIS (D&A) Rules, 1969. The Government appointed Dr.K.M.Abraham as the Inquiry Officer, as the inquiry was initiated against the applicant as a member of AIS, under the AIS (Conduct) Rules, 1968 framed under the AIS Act, 1951 and it is not an inquiry about the internal affairs of the University. Therefore, the respondents contended that the application is liable to be dismissed.

7. In the rejoinder filed by the applicant, he inter alia contended that the disciplinary action initiated against him by serving Annexure.A.11 articles of charge dated 16.5.2013 by the Chief Secretary is wholly incompetent and is ultra vires the power vested with the Chief Secretary to the Government. The applicant while holding the post of Vice Chancellor cannot be said to be serving in connection with the affairs of a State and he was not deputed for service under any company association etc.,wholly or substantially owned or controlled by the State Government,. The first respondent Government had no control or power to oversee the internal communications between the Vice Chancellor and the Chancellor. Since the Chancellor had already called for the comments on the contents of the report and called for comments on the preliminary findings recorded by the applicant it cannot have the effect of taking away the confidential nature of the report submitted by the applicant to the Chancellor. The contention that the State Government is the disciplinary authority and it is governed by Rule 7(b)(i) stating that the applicant was deputed to an authority set up by an Act of the legislature of the State is untenable. There is no element of

lending and borrowing in the matter of appointment as Vice Chancellor which was made on the recommendation of the Government under Section 12(5) of the Act. The University is not substantially funded by the State Government but on the other hand the university receives grant -in -aid provided by the State Government in the annual budget of the State and the State Government can pay to the university such other grants giving grant-in -aid and providing such other grants for the conduct of the university. That by itself cannot bring the university in the category of institutions substantially funded by the State Government or controlled by the State Government so as to bring the applicant within Rule 6(2)(i) of IAS (Cadre) Rules. An IAS cadre officer can be deputed for service in autonomous body not controlled by the Government only. It can be done only by the Central Government in consultation with the State Government on whose cadre he is borne.

8. In the additional reply, among other things, it is stated that the absence of the applicant in the administrative service during his tenure as Vice Chancellor cannot be treated as a vacuum in the administrative service and the same can only be on deputation from the Indian Administrative Service.

The points for consideration are:-

(i) Whether the disciplinary inquiry against the applicant can be instituted only by the Chancellor of the University, as contended by the applicant?

(ii) Whether the Central Government or State Government which

can institute disciplinary inquiry against the applicant?

(iii) Whether Annexure. A8 in OA 679/2013 and Annexure .A11 in OA 539/2013 are liable to be quashed as these charges were not authenticated in the name of the Governor, as contended by the applicant.?

Point No.(i)

9. The learned senior counsel for the applicant has argued that the Chancellor in the appraisal report for the period from 03.01.2011 to 31.08.2011 remarked that the contribution of the applicant in making the university operation was exceptional and that it could not have been accomplished in so short a time without his excellent co-operation and leadership. But on the basis of a publication written by the applicant in a local daily alleged to be having sarcastic comments about a fellow officer, the Government, by stating "administrative reasons" advised the Governor to recall the applicant from the post of Vice Chancellor. That was challenged by the applicant before the Hon'ble High Court by filing a Writ Petition. Though the Writ Petition was dismissed, in the Writ Appeal the order recalling the applicant as Vice Chancellor was set aside and he was directed to be restored to the position as Vice Chancellor. This has infuriated the respondents. It is pointed out that the Hon'ble High Court has emphasized the fact that the appointment of the Vice Chancellor is for a fixed tenure of 5 years and the appointment was made by the Chancellor and so it is argued that he cannot be removed unless the procedure under Section 12(8) of KVASU Act has been followed by the Chancellor. It is further pointed out that

"administrative reasons" stated by the Government as a reason for recalling the applicant from the post of Vice Chancellor of the University was commented upon by the Hon'ble High Court saying that it is only a camouflage and make believe and that it was not the real reason behind in recalling the applicant. Anyway those are not matters which are so germane for consideration in this case.

10. Smt. Rekha Vasudevan, learned Government Pleader appearing for the respondents, has relied upon the decision in **M.H. Devrandrappa Vs. Karnataka State Small Industries Development Corporation AIR 1998 SC 1064** in support of her submission that service rules/conduct rules are made in public interest and for proper discharge of public duties and that the service rules are made for the proper functioning of the organization but they have been violated by the applicant by making statements against Ministers and political leaders. It is also submitted that reasonableness of service do curtail certain kinds of activities among government servants in the interest of efficiency and discipline in order that they may discharge their public duties as government servants in a proper manner without undermining the prestige or efficiency of the organization. It is not necessary to delve deep into those aspects since those are matters concerning the facts based on which the articles of charges were framed against the applicant. The point, which is germane for consideration is as to the competency or jurisdiction of the respondents to issue the charge memo against the applicant.

11. It is not disputed that the applicant who was on Central

Government Service was repatriated to the State of Kerala and was posted there in the Department of Animal Husbandry. The State Government recommended the applicant and based on the recommendation the Chancellor of the University appointed the applicant as the Vice Chancellor. It is also not in dispute that the appointment of the applicant as Vice Chancellor was for a fixed tenure of 5 years. It is vehemently argued by Shri OV Radhakrishnan, the learned Senior Counsel that Section 9(9) of KVASU Act shows that the Chancellor shall have the power to remove the Vice Chancellor from office by an order in writing on charge of misappropriation, misconduct, mismanagement of funds or any other good and sufficient reasons. The proviso therein states that before taking action under Section 9(9) such charges shall be proved by an inquiry conducted by a person who is or has been a Judge of the High Court or Supreme Court appointed by the Chancellor for the purpose,. The second proviso says that the Vice Chancellor shall not be removed under Section 9(9) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. The learned Senior Counsel would also refer to Section 12(2) of KVASU act where it is stated that the Vice Chancellor shall be appointed by the Chancellor among the panel of names recommended by the Search Committee. It is not in dispute that the applicant was appointed as the Vice Chancellor by the Chancellor by invoking the power under Section 12(5) of KVASU Act. It is not in dispute that the appointment was on the recommendation of the State Government. It is vehemently argued by the learned Senior Counsel

that there is a specific provision, Section 12(8) of KVASU Act which deals with the power of the Chancellor to remove the Vice Chancellor from office. The procedure for removal has also been mentioned therein. Section 12 (8) of KVASU Act can be extracted here:

> *"The Chancellor shall have the power to remove the Vice-Chancellor from office by an order in writing on charges of misappropriation, misconduct, mismanagement of funds or willful omission, refusal to carry out the provisions of this Act or for abuse of powers vested on him*
>
> *Provided that before taking an action under this sub-section such charges shall be proved by an inquiry conducted by the Chancellor as provided in clause (ii)*
>
> *(ii) For the purposes of holding an inquiry under this section the Chancellor shall appoint a person who is or has been a Judge of the High Court or the Supreme Court. The inquiry authority shall hold an inquiry after giving an opportunity to make representation by the Vice Chancellor and shall submit a report to the Chancellor."*
>
> *(underlined to lay emphasis)*

Therefore, it is argued by the learned Senior Counsel that since specific provision has been made in KVASU Act as to who should be the inquiry authority there can be no iota of doubt that the applicant who is the Vice Chancellor of KVASU can be removed only by the Chancellor and that too by resorting to the procedure prescribed under section 12(8) of the Act.

12. But it is pointed out by Smt.Rekha Vasudevan, the learned Government Pleader that Section 12(8) of the Act empowers the Chancellor to remove the Vice Chancellor only in respect of any acts of misconduct or any other acts done or omitted to be done in the course of

or while discharging the function as the Vice Chancellor of the University and it does not cover a case of the nature mentioned in Annexures. A8 and A.11 charges. That is further made specifically clear from the words employed in Section 12(8) itself that the removal of the Vice Chancellor shall be in respect of the charges of misappropriation, misconduct, mismanagement of funds or willful omission, refusal to carry out the provisions of "this Act" (KVASU Act) or for abuse of powers vested on him. So far as the cases on hand are concerned the two charges pertain to acts of misconduct of the applicant and not in respect of any act done while or in the course of discharge of the functions of the University. It does not pertain to the internal affairs, management or administration of the University, but it was only for violation of the code of conduct mentioned in Rule 3(1) of the All India Services (Conduct) Rules. The plea raised by the applicant that he can be removed only by the Chancellor, resorting to the procedure prescribed under Section 12 (8) of KVASU Act, is misconceived. We are not inclined to accept the argument so advanced by the learned Senior Counsel appearing for the applicant. This point is answered against the applicant.

Point Nos (ii) & (iii)

13. It is vehemently argued by Smt. Rekha Vasudevan, learned Government Pleader that the contention raised by the applicant that as long as he continues to be the Vice Chancellor of the University no disciplinary powers can be exercised on him by the State Government is totally bereft of merit. It is pointed out that the service of the applicant who

is an IAS officer was placed at the disposal of the Animal Husbandry Department, on State deputation basis as per the provisions of Rule 6(2) (ii) in view of Annexure.R.1(d) and after issuance of Annexure.R.1(d) the name of the applicant was recommended for being appointed as Vice Chancellor of KVASU. It was pursuant thereto that he was appointed as Vice Chancellor of the University. It was only because he is an officer of the IAS he was appointed as first Vice Chancellor of the University. There is no case for the applicant that he is not a member of the All India Service as defined in Section 2 of the All India Services Act, 1957. If so he is still governed by the All India Services (Conduct) Rules, 1968. Since his appointment was solely based on Rule 6 (2)(ii) of Indian Administrative Service (Cadre) Rules, 1954 [Annexure.R.1(d)] and which is the only provison which permits a cadre officer to be deputed to a service under an autonomous body like university the contention to the contrary advanced by the applicant is only to be brushed aside. There is no case for the applicant that he is not a cadre officer as defined in Rule 2(a) of Annexure. R1(d) Rule. He continues to be governed by the All India Administrative Service Act, Indian Administrative Service (Cadre) Rules, All India Service (Conduct) Rules, and All India Service (D&A) Rules, 1969. In this connection the word "member of service' as defined in Rule 2(c) of AIS (Conduct Rules) 1968 has also been referred to. As long as the applicant is a "member of service" as defined in Rule 2(d) of AIS Rules, 1969 the plea raised by the applicant that he is not governed by the AIS (D&A) rules, 1969 during his tenure as Vice Chancellor is palpably unsound.

14. It is also argued by Smt.,Rekha Vasudevan that it is only because he still continues to be a 'member of Service' he submitted a representation to the Chief Secretary requesting to consider for inclusion of his name in the 1998 panel batch IAS officers for promotion to the grade of Secretary, for which Annexure.AR.1(e) has been relied upon by respondents. The further fact is that before he was recommended by the State Government to be appointed as the Vice Chancellor he had to be called back and placed at the disposal of Animal Husbandry Department of the State Government because only then the State Government gets the authority to recommend him for being appointed as the Vice Chancellor of the University. So much so according to the respondents the state Government has every authority to initiate disciplinary proceedings and impose penalty on the applicant even during his continuance of tenure as Vice Chancellor. Much emphasis has been laid by the learned Government Pleader that Articles of Charge have been issued to the applicant not in respect of any activity or action done by the applicant while discharging his function as the Vice Chancellor of the University but it was in respect of violation of code of conduct as a member of service attracting the disciplinary action under AIS (Conduct) Rules and AIS (D&A) Rules. The fact that he is the Vice Chancellor of the University cannot be a carte blanche or a total immunity against disciplinary action contemplated by the State Government for the acts complained of, as mentioned in the articles of charge. It is also vehemently argued by the learned Government Pleader that if the applicant's plea that his appointment as Vice Chancellor is not on

deputation is accepted, then it would lead to a position that he cannot come back to the parent service and he cannot retain his lien; or in other words; if his plea is accepted, once he becomes the Vice Chancellor he must be deemed to have resigned from the IAS .That is not the case of the applicant also. Therefore, the contention that the State Government has no authority to initiate disciplinary action against the applicant must fall to the ground.

15. Rule 6 of IAS (Cadre) Rules, 1954 is quoted hereunder:-

"6. Deputation of cadre officers:-

6(1) A cadre officer may, with the concurrence of the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not which is wholly or substantially owned or controlled by the Central Government or by another State Government.

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

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

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

(ii) an international organization, an autonomous body not controlled by the Government, or a private body, by the Central Government in consultation with the State Government on whose cadre he is borne:

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

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

16. A reading of of Rule 6(2) (ii) of the IAS (Cadre) Rules, All India Service (Conduct) Rules 1968 and AIS (D&A) Rules, 1969 would leave no doubt that the State Government is the cadre controlling authority competent to take disciplinary action against the applicant in respect of the misconduct etc. alleged to have been committed by the applicant as a member of the IAS.

17. It cannot be disputed that under Rule 6(2)(ii) of the IAS (Cadre) Rules and the corresponding rules the officers of the All India Services are used to be sent on deputation to the Universities/Teaching or training institutions of repute which are autonomous organizations and which are not controlled by the Government but such deputations fall within the purview of Rule 6(2) (ii) . Rule 6(2) says that a cadre officer may also be deputed for service to an international organization, an autonomous body not controlled by the government or a private body, by the Central Government in consultation with the State Government on whose cadre he is borne provided that no cadre officer shall be deputed to any organization or body of the type referred to in Item (ii) except with his consent. Guidelines issued by the DoP&T, in matters relating to deputation of members of the All India Services under Rule 6(2) (ii) of the respective cadre rules would show that deputation can be allowed to statutory bodies created by law of parliament or legislature and also to other organizations. It is further made clear as per the guidelines those "organizations" covered by Rule (6(2)(ii) may include constitutional bodies, statutory organizations, commissions, regulatory authorities and organizations like Universities with

functional autonomy created under the constitutional and statutory provisions.

18. In this connection the guidelines for deputation of members of the All India Services under Rule 6(2)(ii) of the respective cadre rules issued by the DOP&T are also relevant. The relevant portions of which are extracted hereunder:-

> 1. Deputation under Rule 6(2)(ii) may be allowed to the following categories of organizations:
>
> (a) Constitutional bodies
>
> (b) Statutory bodies created by law of Parliament or State Legislatures.
>
> **(c) and (d) omitted**
>
> (e)Autonomous bodies not controlled by Government which are defined as follows:
>
> (a) The following criteria may be taken into account – any of the three may be the basis:
>
> (i) **Structure of the Organization** – Organizations covered by the Rule 6(2) (ii) may include Constitutional bodies, Statutory organizations, Commissions, Regulatory Authorities and organizations like Universities with functional autonomy created under Constitutional and statutory provisions. These organizations may opt for the Central Staffing Scheme or not opt for the same.
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> **(ii) and (iii) omitted.**

19. KVASU – University is a statutory body created by law of Kerala Legislature. Rule 7 of the guideline issued in that behalf would also show that all deputations under Rule 6(2)(ii) shall be considered only with the consent of the officer concerned and the approval of the cadre controlling authority. It is stated that cadre controlling authority would mean the State Government concerned if the officer is in his cadre.

20. Rule 7 of the All India Services (Discipline and appeal Rules)

1969 reads thus:

> *"**7(1)** Where a member of the Service has committed any act or omission which renders him liable to any penalty specified in Rule 6--*
>
> *(a) Omitted since it is not relevant*
>
> ***(b)** If such act or omission was committed after his appointment to the Service, ---*
>
> ***(i)** While he was serving in connection with the affairs of a State, or is deputed for Service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of that State;*
>
> *(ii)omitted*
>
> *(iii)omitted*
>
> *(iv)omitted*
>
> *(v) omitted*
>
> *(vi) While he was absent from duty otherwise than on leave, the government which would have been competent to institute disciplinary proceedings against him, had such act or omission been committed immediately before such absence from duty;*
>
> *(vii) The Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to provisions of sub-rule(2),to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company associations, body of individuals, or local authority, as the case may be under whom he is service at the time of institution of such proceedings shall be bound to render all reasonable"facilities to the Government instituting and conducting such proceedings."*

Therefore, the learned GP would submit that the act complaint of and

stated in the two charges, Annexure A8 in OA.679/2013 and Annexure.A.11 in OA 539/2013, were allegedly committed by the applicant while he was absent from duty otherwise than on leave. The State Government would have been competent to institute disciplinary proceedings against the applicant had such act or omission been committed immediately before such absence from duty, namely before he was appointed as Vice Chancellor of KVASU. Before he was appointed as Vice Chancellor he was posted in the Animal Husbandary Department of the Kerala Government. As stated earlier, the allegations are not pertaining to any acts or omissions on the part of the applicant while discharging his duty as the Vice Chancellor but it was pertaining to the alleged misconduct committed by him as a member of the All India Service.

21. It is vehemently argued by the learned Senior Counsel for applicant that the Hon'ble High Court of Kerala in the Writ Appeal has clearly held that the appointment of the applicant as a Vice Chancellor was for a period of 5 years and that it was made by the Chancellor of the University and so Rule 25 of IAS (Cadre) Rules has no application at all. It is further submitted that since he was appointed as the first Vice Chancellor of the University and since it was further held that he cannot be recalled during the period of 5 years mentioned therein, in the light of the judgment of the Hon'ble High Court, the contention raised by the respondents that the applicant is on deputation cannot be sustained at all. According to the applicant it is not a case of deputation but actually a case of appointment as Vice Chancellor and so the provisions contained in IAS (Cadre) Rules

can have no application as long as he continues as the Vice Chancellor of the University.

22. Learned senior counsel Sri OV Radhakrishnan has relied upon the decision of the Supreme Court in **Union of India and others Vs. Shardindu reported in 2007(6) SCC 276** to buttress his submission that the appointment of the applicant as Vice Chancellor of the University cannot be termed as a deputation post and so he cannot be treated as a deputationist. In the case cited above, the respondents therein was appointed as the Chairperson of NCTE. . An order was passed by the Union of India purporting to terminate the deputation of the respondent. That was challenged by the respondents before the Hon'ble High Court of Delhi. The order of the Union of India was set aside and that was confirmed by Division Bench of the High Court as against which the Union of India approached the Hon'ble Supreme Court. The Hon'ble Supreme Court also confirmed the decision of the High Court. The observations made by the Hon'ble Supreme Court in Paragraph 26 have been very much relied upon. It was argued in that case, on behalf of the Union of India, that the appointment of the respondent therein was purely on deputation basis and since the deputation period has been terminated, the appointing authority has full right to terminate his deputation and he can be sent back to his parent department; that is, the State of UP. But the Hon'ble Supreme Court held that the appointment of the respondent cannot be said to be purely on deputation basis; strictly speaking, it is not a deputation post because the incumbent has been selected under the Act

and he has not come on deputation as such, though loosely it can be said to be on deputation, in the sense, that since the incumbent should have his lien in the State of UP and State of UP has permitted him to join the post for a fixed period of four years or till he attains the age of superannuation; namely 60 years, Thus according to the learned senior counsel, here also the applicant was appointed as the Vice Chancellor of KVASU for a fixed term and as such it cannot be said to be a deputation.

23. In the decision cited above it was further held by the Hon'ble Supreme Court:

> *"since the respondent holds a lien in the State of UP therefore, to some extent he can be said to be on deputation <u>but it is not in the sense of deputation as in the case of an All India Service person</u> who is sent on deputation to the Central Government or to <u>other organization.</u>"*
>
> *(underlined by me to lay emphasis)*

24. The learned senior counsel would submit that, as observed by the Hon'ble Supreme Court in the decision cited above, it is not a case of deputation since the period for which the applicant was appointed as a Vice Chancellor cannot be cut short and he cannot be sent back to his parent department since that is the decision rendered by the Hon'ble High Court in the Writ Appeal No.347/2012 filed by the applicant). It is true that the appointment of the applicant is for a fixed tenure and the appointment was made under the KVASU Act. But the aforesaid decision rendered by the Hon'ble Supreme Court cannot be made applicable to the facts of this case

since that was a case where the Supreme Court was dealing with a case in which the Union Government set aside the order of deputation but not a case where the disciplinary proceedings were initiated by the government concerned.

25. The very same judgment has been relied upon by Smt.Rekha Vasudean, Learned Government Pleader emphasizing on the portion underlined as above and contends that the Hon'ble Supreme Court has distinguished or differentiated the All India service personnels from other officers. It was submitted that "other organization" referred to therein would take in the University also (vide guidelines for deputation of members of All India Services under Rule 6(2)(ii) of the respective cadre Rules dated 27.12.2006 also). Since the All India service personnel can be sent to other organizations like University as distinguished from other service persons the aforesaid decision will only support the case of the respondents, learned government Pleader submits.

26. The contention raised by the applicant that the State Government has no jurisdiction to institute disciplinary proceedings would lead to a situation where he must sever his link with the All India Service and if so he can no longer be treated as a member of the Service as mentioned in Annexure.13 Rules. He would be inviting another question, why he has chosen to file this application before this Tribunal. If only he is a member of the service governed by AIS Act and Rules, he can approach this Tribunal. So, having approached this Tribunal how can he now contend that he should not be treated as member of the service coming under the

AIS Rules; the State of Kerala being the cadre controlling authority, since admittedly he was allocated to Kerala cadre. If he is a member of an All India Service for the purpose of agitating his grievances before this Tribunal, then it must be held equally that he would be governed by the AIS (Conduct) Rules in this case. He cannot choose to enjoy the rights and privileges of an AIS officer without discharging the responsibilities and obligations that go with it.

27. It is not in dispute that before the applicant was appointed as the Vice Chancellor he was repatriated to the Animal Husbandry Department of the State Government. The applicant was considered for appointment as Vice Chancellor solely in exercise of Rule 6(2)(ii) of Indian Administrative Service (Cadre) Rules 1954. According to the applicant a conjoint reading of Rule 6(2)(ii) of the IAS (Cadre) Rules would make it manifestly clear that a cadre officer can be deputed for Service under the Central Government with the concurrence of the State Government and similarly cadre officer can also be deputed for service under an autonomous body not controlled by the Government. Thus according to the applicant the power under Rule 6(2)(ii) can be exercised by the Central Government alone and, if that be so, the State Government is incompetent to depute a cadre officer in exercise of the power under Rule 6(2)(ii) of IAS (Cadre) Rules. The further argument is that even the Central Government can depute a cadre officer only to an autonomous body not controlled by government. According to the applicant the University is controlled by the State Government being substantially funded by the State Government. The learned Government

Pleader would submit that the University is not controlled by the State Government though gives grant-in-aid. Since the applicant is borne on the State cadre the contention that if at all it is only Central Government who can take action against the applicant is devoid of any merit. If the contention of the applicant is that the University is controlled by the State Government through funding, then Section 7(1)(b)(i) of the AIS (D&A) Rules will clearly come into play. On the other hand, if his appointment in the University is treated as under Rule 6 (2) (ii) of the IAS (Cadre) Rules, he would come under Rule 7(1)(b)(vi) of the AIS (D&A) Rules which covers members of the service who are absent from duty otherwise than on leave. Either way, it is the State Government which would have the jurisdiction to initiate the proceedings.

28. It was held by the Hon'ble Supreme Court in **State of Punjab and others Vs. Inder Singh and others 1997 (8) SCC 372:**

> 18. The concept of "deputation"is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in service law and "the dictionary meaning of the word "deputation"is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is

transferred...."

29. Relying on the aforesaid decision it is argued that the applicant, after the expiry of the period of deputation, has to go back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Therefore, as long as he continues to be a member of the Indian Administrative Service the contention that he is not amenable to the jurisdiction of the State Government, to initiate disciplinary action against him , is rather unsound and untenable. Further if as contended by the applicant his appointment in the University is not a case of 'deputation', it would have to be held that the order of the State Government placing his services with the University for appointment as Vice Chancellor was without jurisdiction or authority in terms of the AIS Rules for want of an appropriate provision thereunder. But the applicant never challenged his appointment in the University as one beyond the jurisdiction of the State government. Rather he had so happily accepted it so much so, he resisted (successfully) the State Government's attempt to recall him from the post. Section 12(5) of he KVASU Act says that the first Vice Chancellor shall be appointed by the Chancellor on the recommendation of the Government. Admittedly the applicant was the first Vice chancellor of the University. Having admitted the fact that he was recommended by the State Government and it was based on that recommendation Chancellor appointed him as the Vice Chancellor it must necessarily mean that the State Government did appoint or recommend his appointment as the first

Vice Chancellor based on an enabling provision in the relevant AIS Rules. State Government cannot appoint or recommend an AIS Officer to the post of Vice Chancellor in the absence of an enabling provision in the relevant AIS Rules. Therefore, as he accepted his appointment as the Vice Chancellor as valid in terms of the AIS Rules he cannot escape the consequence thereof which would include his being subject to disciplinary proceedings of the authority which made the appointment in the nature of deputation.

30. Article 166(1) of the Constitution of India states that all executive actions of the government of a State shall be expressed to be taken in the name of the Governor. Article 166 (2) says that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall be not be called in question on the ground that it is not an order or instrument executed by the Governor. It is vehemently argued by the learned Senior Counsel appearing for the applicant that if the order (Article of charge) is to be treated as valid it must have been authenticated in the name of the Governor but the articles of charge (Annexure.A8 in OA. 679/2013 and Annexure.A.11 in OA. 539/2013) are not authenticated in the manner required by the Rules and as such the charges should be treated as invalid and non est.

31. Rule 11 of the Rules of Business of the Government of Kerala says that all orders or instruments made or executed by or on behalf of the

government of the State shall be expressed to be made or executed in the name of the Governor. It is so stated, as required under Article 166(1) and Article 166(2) of the Constitution of India. Rule 12 of the Business Rules says that every order or instruments of the Governor of the state shall be signed by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or by such other officer as may be specifically empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument. When defining the Secretary to the council of Ministers, it is stated that the Chief Secretary or such other officer as the council of Ministers may appoint, shall be the secretary to the council. It is submitted on behalf of the respondents that when the instrument is signed by the Chief Secretary it cannot be said that it was not signed by a Secretary since Chief Secretary is above the Secretary in the hierarchy.

32. In order to substantiate the fact that the Chief Secretary has acted only as per the decision of the Govt., the entire file (photo copy) has been produced before us. We have perused the file. We could find that after seeing and verifying the file notings it was directed by the Chief Minister that the disciplinary proceedings be initiated against the applicant and thus charges were later framed against the applicant. The relevant page of the file containing the decision is seen signed by the Chief Minister of Kerala. If the requirements of Article 166 (1) are not complied with, the immunity to the order mentioned therein cannot be claimed by the State, the applicant contends. But, even if the requirement of Article 166

are not complied with it will not nullify the order itself, if it appears from other materials that such a decision was in fact taken by the Government, the learned Government Pleader submits. When an order is duly signed by the officer authorized by the rules made by the Governor under Article 166(2) even if the order was not expressed to be made in the name of Governor, if from the relevant files it is discernible that the order was signed by the Chief Secretary as authorized by the Chief Minister, it cannot be said that it does not get the immunity as provided under Article 166(2), submits the learned Government Pleader.

33. Annexure A8 is the articles of charge which is attacked by the applicant in OA 679/2013. Annexure.A.11 is the article of charge which is under challenge in OA 539/2013. Both these articles of charges are seen signed by the Chief Secretary Shri EK Bharat Bushan. It is not authenticated that it was signed by the order of the Governor. Hence the learned senior counsel Shri OV Radhakrishnan vehemently argues that these two charges have no sanctity in the eye of law since Annexure A8 and A11 would only show that these charges were signed by the Chief Secretary in his individual capacity and not as per the order of the Governor.

34. It is argued by the learned Government Pleader that no specific plea was raised by the applicant in the two original applications or even in the rejoinder filed by him in the two cases. It is not acceptable. The challenge in that line is well discernible from the rejoinder filed by the applicant.

35. Section 3(60) of the General Clauses Act, 1897 says: "State Government" as respects anything done or to be done shall mean, in a State, the Governor. Annexures. A8 and A.11 charges were not issued by the Government nor by the Secretary as an authority empowered to authenticate orders or instruments issued by the Government, the applicant contended.

36. The decision of the Larger Bench of the Hon'ble Supreme Court in **Dattatraya Moreshwar Vs. State of Bombay and others AIR 1952 SC 181** has been relied upon by the learned Government Pleader. There, the order of preventive detention issued against the petitioner therein was under challenge. It was argued before the Hon'ble Supreme Court that all executive actions of a Government of the State must be expressed and authenticated in the manner provided under Article 166(1) of the Constitution. But the Attorney General pointed out in that case that there is a distinction between taking of an executive decision and giving formal expression to be so taken. Usually executive decision is taken on the office files by way of noting or endorsements made by the appropriate Minister or officer. If every executive decision has to be given a formal expression the whole governmental machinery will be brought to a standstill, argued the Attorney General in that case. It was argued that every executive decision may not be formally expressed and this is particularly so when one superior officer directs his subordinate to act or forbear from acting in a particular way. That argument was not accepted but the other argument advanced by the learned Attorney General that an

omission to authenticate an executive decision in the form mentioned in Article 166 does not make the decision itself illegal was accepted. It was held by the Hon'ble Supreme Court:

> *"...Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity....."*

Though it was contended that the order of preventive detention passed against the petitioner is a nullity, because it was not expressed to be made in the name of the Governor, the order issued against the petitioner therein was found to be perfectly valid.

37. Another Larger Bench decision of the Hon'ble Supreme Court in **State of Rajasthan and another Vs. Sripal Jain AIR 1963 SC 1323** has also been relied upon in this connection. In that case an order of compulsory retirement was purportedly passed by the Government against the police officer but it was found by the Hon'ble Supreme Court that the order was in fact not passed by the Government but by the Inspector General of Police. But it was argued by the learned counsel appearing for the police officer (the respondent before the Hon'ble Supreme Court) that it was not actually an order passed by the government but by the Inspector General of Police. It was further argued that if it is an order of the Government it should be in the form required by Article 166(1) of the Constitution. It was noticed by the Hon'ble Supreme Court that the impugned order was in the passive voice and it did not say in the active voice that the Inspector General of Police ordered the retirement of the

officers mentioned therein, though the impression that a person will get from it certainly is that the order of retirement was being passed by the Inspector General of Police. Therefore, it was held by the Hon'ble Supreme Court that the burden was thrown because of that defect in the form of the order on the appellant's (State of Rajasthan) to show that in fact the order was passed by the Government. It was further found that the production of papers from the relevant files do show that the order was passed by the Government and thus it was held that the State has discharged the burden cast on it by production of papers from the relevant file. Hence it was held by the Hon'ble Supreme Court that the said file shows that the recommendation of High Powered Committee was approved by the Home Minister and the Chief Minister and the order of compulsory retirement was thus passed by the Government of Rajasthan. Hence considering the Rajasthan State Rules of Business it was found that the order was from the Government, though it was communicated by the Inspector General of Police and its form was defective but since the order of retirement was passed by a proper authority it cannot be said to be invalid in law. Thus the appeal filed by the State of Rajasthan was allowed by the Hon'ble Supreme Court.

38. The learned Government Pleader would submit that the facts dealt with in the case cited supra are almost identical to the facts of this case. As has been said earlier the files produced by the respondents would clearly show that it was after much discussion and deliberation that a decision was taken by the Ministry to initiate disciplinary proceedings

against the applicant and in fact the decision was signed by the Chief Minister. Therefore, the learned Government Pleader would submit that though in fact that it was not stated "By the order of the Governor" it is only a formal defect which cannot go to the root of the matter so as to treat the articles of charges (Annexures. A8 and A.11) non est.

39. The business of the State is a complicated one and so it has necessarily to be conducted through a large number of officials and authorities. Therefore, the Constitution requires that the action must be taken by the authority concerned in the name of the Governor. The learned Government Pleader would submit that the two files produced would show that there was discussion and deliberation as to the misconduct of the applicant and it was based on the reports made available the Chief Minister approved the disciplinary action intended to be instituted against the applicant. It is further argued that even if it is assumed that the action of the Government must be expressed and authenticated in the manner provided under Article 166(1) of the Constitution and Rule 11 of the Kerala Rules of Business of Kerala Government it has to be held that here there was only defect in the form but it does not affect the very order passed by the Government as is well narrated in the two files (photo copy) produced before this Court.

40. It is important to note that only charges (A8 in OA 679/13 and A.11 in OA.539/13) were framed against the applicant and no final order was passed against him. By issuing the charges against applicant, he is only invited to furnish his explanation/written statement. There would be a

fulfledged inquiry in the matter. Therefore, it can be found that the framing of the charge and issuance of the same to the applicant are only steps in aid of the conduct of the disciplinary inquiry and that it is not akin to the final order passed against the applicant. Only when an order takes away the right of the applicant, it should be on behalf of the Governor of the State, the learned Government Pleader submits. But here the articles of charges were signed by the Chief Secretary as per the decision taken by the Chief Minister as seen in the two files produced before the Tribunal. The contention that the Chief Secretary is not competent to sign the articles of charges cannot be sustained since the Chief Secretary is also the Secretary of the council of ministers. It is the decision of the State Government that is being carried out or executed by the Chief Secretary. Since it is only at the interlocutory stage, the court should not interdict the disciplinary inquiry. To a specific querry whether in all such cases the State Government has always issued only the final orders after conclusion of the inquiry in the name of the Governor or it is an omission that happened in this case alone, the learned Government Pleader stated that this case is not an exception and as a matter of practice, the decision to conduct a departmental inquiry is not expressed in the name of the Governor.

41. It is pertinent to note that there is not only a category of final order but also another category; an order interlocutory in nature or of the nature of steps-in-aid for the final disposal of a disciplinary proceedings, other than an order of suspension. That is the reason why Rule 15 says that no appeal lies against such an interlocutory order or order in the nature

of step-in-aid for the final disposal of a disciplinary proceedings. Framing of the charge/issuance of the articles of charge can only be treated as a decision of the nature of steps-in-aid for the final disposal of a disciplinary proceedings as mentioned in Rule 15(1)(ii) of AIS (D&A) Rules, 1969. Therefore, going by the observations made by the Hon'ble Supreme Court in the two Larger Bench decisions Dattatraya Moreshwar Vs. State of Bombay and others AIR 1952 SC 181 and State of Rajasthan and another Vs. Sripal Jain AIR 1963 SC 1323 it can be safely found that the articles of charge (Annexures. A8 and A.11) not being final orders, but only expression of a decision of the nature mentioned above, cannot be said to be orders which should be authenticated in the manner provided under Article 166 (i) of the Constitution of India and Rule 11 of Rules of Business of Government of Kerala.

42. It is vehemently argued by the learned Senior Counsel Shri OV Radhakrishnan that even if the Council of Ministers or the Chief Minister has recorded his opinion in the file, recommending action against the applicant, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordances with Article 166 (1) and Article 166 (2) of the Constitution of India and Rules 11 and 12 of the Rule of Business of the Government of Kerala. In support of that submission the learned Sr.Counsel has relied upon the decision in **State of Uttaranchal and another Vs.Sunil Kumar Vaish and others** reported in **(2011) 8 SCC 670.** The facts dealt with therein are entirely different. The learned government pleader pointed out that in that case

the land in question was acquired in the year 1948. Payment of compensation in regard to the land acquired was paid by the State Government at that time itself; it was paid to one of the members of patta holder family as per the condition then was. Hence it was found that for the second time, payment of compensation amount pertaining to the same land on the same basis was not permissible as per the law. In that case recommendation was made by the District Magistrate for compensation of Rs. 70995150 in spite of the fact that the applicant therein had already been declared as an unauthorized occupant of the land in question. Considering those aspects the Hon'ble Supreme Court held that 'noting' recorded in the file is merely a noting simplicitor and nothing more and that it merely represents the expression of opinion by the particular individual. It was further held that by no stretch of imagination can such noting be treated as a decision of the government. It was then held:

> *"Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be and authenticated in the manner provided in Article 7(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/ reversed/overruled or overturned and the court cannot take cognizance of*

the earlier noting or decision for exercise of the power of judicial review."

Therefore, it is clear that the facts dealt with therein are not identical. Further, it could mean that only when an order which affects the rights of the parties needs to be expressed in the name of the Governor. In this case, the mere issue of a charge sheet leading to an inquiry where every right of the applicant stands protected could not be said to affect his rights. Therefore, the expression of such an intent of the Government to conduct an inquiry to establish the truth of the allegations against the applicant need not necessarily be expressed as an order of the Governor.

43. In **Gulf Goans Hotels Company Limited and another Vs. Union of India and others** reported in **(2014) 10 SCC 673 which** has been relied upon by the learned Senior Counsel appearing for the applicant, the appellant therein were owners of hotels, beach resorts and beach bungalows in Goa. Orders were passed by the State authorities for demolition of those buildings. That was challenged by the owners of the hotels. Writ Petition was also filed by Goa Foundation seeking demolition of constructions raised by those appellants. Those Writ petitions were heard by the Hon'ble High Court of Bombay. The Hon'ble High Court upheld the orders passed by the authority requiring the appellants therein to demolish the existing structures in that case. Some guidelines issued, based on stock home declaration, was relied upon. It was argued on behalf of the appellants therein that the text and language of the guidelines would make it clear that there was no mandate of law in any of the guidelines. It was further argued that the guidelines do not amount to an

exercise of law making by the executive under Article 73 of the constitution and in any case those guidelines were never published or authenticated as required under Article 77 of the Constitution. In the factual background of that case it was held by the Hon'ble Supreme Court:

> "16. *It may, therefore, be understood that a government policy may acquire the "force of law"if it conforms to a certain form possessed by other laws in force and encapsulates a mandate and discloses a specific purpose. It is from the aforesaid prescription that the guidelines relied upon by the Union of India in this case, will have to be examined to determine whether the same satisfies the minimum elements of law....."*

Therein it was found that the guidelines in question were not issued under any existing statute. In the back ground of that case it was held that in the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the government and would really represent the expression of opinion. The decision of Sunilkumar's case (2011(8) SCC 670) was followed by the Hon'ble Supreme Court in this case [2014) 10 SCC 673] and it was held that what is claimed to be the law must be notified or made public in order to bind the citizen. Therefore, the facts dealt with therein are also entirely different.

44. The learned Government Pleader has also relied upon the decision of the Supreme Court in **Special Director and another Vs. Mohd. Ghulam Ghouse and another reported in 2004 (3) SCC 440** in support of her submissions that even the High Court cannot entertain Writ Petitions filed by the employee/officer questioning legality of the show cause notices stalling inquiries unless the High Court is satisfied that the

cause notices stalling inquiries unless the High Court is satisfied that the show cause notice is totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts. It applies to the Tribunal as well. It is submitted by the Government Pleader that so far as the case on hand is concerned from what have been stated earlier there can be no iota of doubt that State Government is competent to initiate disciplinary action against the applicant and as such it cannot be said that the show cause notice issued to the applicant is totally non est in the eye of law. In other words, it is not a case where there is total lack of jurisdiction of the authority to inquire into the matter. It was held by the Supreme Court in the decision cited above:

> *"5. This court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling inquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court.....".*

45. In the light of what have been held by the Hon'ble Supreme Court in the two decisions cited supra Dathathreya Moreswar and Sripal Jains case, it cannot be said that the articles of charges (Annexure. A8 and A.11) are non est or void ab initio. The applicant has only been called upon to submit his statement of defence and to participate in the inquiry, where the applicant can raise all his contentions denying the charges levelled against him. Since the decision to issue the articles of charges was based on the decision taken by the Government, which was signed by the Chief Minister as borne out from the files produced, we are of the considered view that the plea raised by the applicant that the two charges (Annexures.8 and A.11) mentioned above are without jurisdiction and should be treated as non est is devoid of any merit.

46. In the light of what is stated above, these two O.A.s are dismissed. No order as to costs.

Dated the 10th day of July, 2015

(R. Ramanujam)
Administrative Member

(N.K.Balakrishnan)
Judicial Member

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