**IN THE HIGH COURT AT CALCUTTA**

**(CONSTITUTIONAL WRIT JURISDICTION)**

**APPELLATE SIDE**

**Present :**

**The Hon'ble Justice Partha Sarathi Chatterjee**

**WPA 22091 of 2017**

**Indrani Datta (Chaudhuri)**

**Vs.**

**Vidyasagar University & Ors.**

For the petitioner : Mr. Subir Sanyal, Sr. Adv.,
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury,
Ms. Soumoyadipa Kanu,
Mr. Sourojit Mukherjee,
Mr. Durlav De.

For the Vidyasagar University : Mr. Joydip Kar, Sr. Adv.,
Ms. Debjani Sengupta,
Ms. Koyel Bag,
Mr. Abhijit Chatterjee,
Ms. Shahina Haque.

Heard on : 12.03.2026

**Judgment on : 16.04.2026**

**Partha Sarathi Chatterjee, J.:-**

**Preface:**

1. By filing the present writ petition, the petitioner prays for a declaration that the disciplinary proceeding initiated against her vide charge-sheet dated 3rd November, 2016 by the respondent no. 4, namely the Executive Council of the University, is illegal, arbitrary and without jurisdiction. In addition, the petitioner prays for issuance of a writ of mandamus commanding the respondents not to proceed with the enquiry initiated on the basis of the said charge-sheet and the enquiry report dated 28th April, 2017, as also a writ of certiorari for quashing the said charge-sheet and the enquiry report.

**Facts:**

2. The dispute giving rise to present litigation began in or about June 2016, when the Registrar of the University as per direction of the Vice-Chancellor of the University (for short, VC) issued a notice dated June 14, 2016 containing certain itemized queries regarding the petitioner's conduct. The petitioner replied to the said notice on June 28, 2016, categorically denying all allegations and contending that the queries were vague, unsupported by any material particulars, and issued without proper authority.

3. However, despite such reply, the University proceeded to issue a formal charge-sheet dated 3rd November, 2016, pursuant to a decision of the Executive Council of the University (for short, EC), containing nine charges. The essence of the allegations is as follows:

i) The petitioner undermined the authority of the Vice-Chancellor and Registrar by impleading them by name with distorted address in W.P. No. 23136 (W) of 2015 and sent emails to Executive Council members intimating such impleadment;

ii) By RTI application dated 24th August, 2012, she sought details of the VC's foreign visits since 1st November, 2011 and subsequently a news item was published on the same issue in the Dainik Statesman on 3.11.2012 and the University authority had reason to believe that such information was leaked by the petitioner.

iii) She made unauthorized and distorted statements to the press on official matters, causing defamation;

iv) In 2013–2014, she lodged complaints against colleagues without prior permission and taking name of the VC attempted to malign him;

v) She disregarded the University calendar and attempted to reschedule classes on holidays, questioning the Registrar's directions;

vi) She remained on unauthorized absence from 1st July, 2015 to 31st August, 2015 and later applied for earned leave;

vii) She developed a habit of disobeying official communication protocols and sent emails to the personal email id of the VC.

viii) She developed a habit of making false allegations, including of sexual harassment against her senior colleagues including Prof. Das Purkayastha, affecting the University's reputation;

ix) She acted beyond her authority and showed in subordination by sending email dated 12th October, 2015 at 5:23 P.M. to the VC and forward to the members of the 7th Executive Council;

4. The petitioner submitted a detailed written statement of defence on 17th November, 2016, disputing not only the allegations on merits but also raising a specific objection to the jurisdiction of the EC to initiate and conclude disciplinary proceedings against her. According to the petitioner, in view of the deletion of the word 'teachers' wherever it occurs in Section 21(ix) of the Vidyasagar University Act, 1981, as introduced by the West Bengal University Laws (Amendment) Act, 2011, the power of the EC to suspend, discharge, or otherwise punish teachers stands taken away. By the said letter, the petitioner requested the supply of certain documents, including copies of the resolutions of the EC dated 25.07.2016 and 19.10.2016, as well as copies of the documents listed in Annexure-III to the charge-sheet.

5. However, by a letter dated 28.12.2016, the petitioner was informed that her reply was found to be unsatisfactory, and the Disciplinary Authority (for short, 'DA') decided to hold a departmental enquiry against her. Accordingly, Prof. Jayashree Roy of the Department of Economics, Jadavpur University was appointed as the Enquiry Officer to enquire into the charges, and Dr. Sukhen Som, Deputy Registrar of the University, was appointed as the Presenting Officer.

6. In reply to the letter dated 28.12.2016, the petitioner, by her letter dated 9th January, 2017, raised an apprehension of prejudice on the ground of violation of the principles of natural justice. Firstly, she questioned the jurisdiction of the EC

to initiate disciplinary proceedings against a teacher of a university. Secondly, she objected to the appointment of Prof. Roy as the Enquiry Officer, contending that, being a member of the 7th EC which had suspended her and a respondent in W.P. No. 23136 (W) of 2015, Prof. Roy could not act impartially.

7. However, without addressing these objections, an enquiry was conducted by Prof. Roy on 9th January, 2017. The petitioner alleges that no one other than herself and the Enquiry Officer was permitted in the room, that the proceedings were audio-visually recorded and simultaneously reduced into writing, and that she was told a typed copy would be supplied later. She contends that neither the recordings nor the transcript, nor the documents listed in Annexure-III or the minutes of the proceedings, were ever furnished to her. In this backdrop, the petitioner asserts that the enquiry was conducted in violation of the principles of natural justice.

8. An enquiry report dated 18th April, 2017 was thereafter prepared and subsequently accepted and approved by the 8th EC of the University in its meeting held on 12th July, 2017. The said report was thereafter served upon the petitioner under a covering letter dated 18th July, 2017, directing her to submit her response within seven days from the date of receipt thereof.

9. From the enquiry report, the petitioner came to learn that the enquiry had been held on 2nd March, 2017; however, no notice intimating the said date had been served upon her. The petitioner, therefore, contends that the entire enquiry proceeding, including the production of witnesses, recording of their depositions, and the production and exhibition of documents, was conducted in her absence. Consequently, she was not afforded an adequate opportunity to effectively

participate in the proceedings or to cross-examine the witnesses, thereby rendering the enquiry one-sided and procedurally irregular.

10. From the enquiry report, it further appears that the Enquiry Officer herself put questions to the witnesses and, according to the petitioner, thereby assumed the role of the Presenting Officer. The petitioner further contends that the Enquiry Officer examined only 5 (five) out of 19 witnesses against whom the petitioner had lodged specific complaints and initiated proceedings, and proceeded to rely on the depositions of such selected witnesses, who are alleged to be partisan in nature.

11. The petitioner contends that, in view of the amended provisions of Section 29 of the Vidyasagar University Act, 1981, the VC is the appointing authority and, as such, the EC cannot act as the disciplinary authority in respect of a teacher of the University. However, in the present case, the disciplinary proceeding was initiated against the petitioner by the EC, which, according to the petitioner, is bad in law. In light of the aforesaid, the petitioner has preferred the instant writ petition.

12. The record reveals that, upon arriving at the conclusion that the writ petition ought to be decided after exchange of affidavits between the parties, a Co-ordinate Bench of this Court, by an order dated 2nd August, 2017, called for affidavits from the parties and further directed that any order that may be passed by the disciplinary authority shall not be given effect to without leave of the Court.

**Respondents' case:**

13. The specific defence taken by the respondents in their affidavit-in-opposition is that, on 9th January, 2017, when the petitioner appeared before the Enquiry Officer (for short, the EO), she questioned the appointment of the said EO and informed her in writing that it would not be possible for her to participate in the enquiry proceedings, which, according to the petitioner, were void *ab initio*. In view thereof, the enquiry proceedings were conducted *ex parte*.

14. The EC approved the enquiry report in its meeting held on 12th July, 2017, and a copy thereof was forwarded to the petitioner under cover of a letter dated 18th July, 2017. At that stage, the petitioner approached this Court by filing the present writ petition and obtained an interim order.

15. The petitioner submitted her representation dated 13th August, 2017 in response to the enquiry report. Upon due deliberation in its meeting held on 28.08.2017, the EC forwarded copies of the documents and statements recorded during the enquiry proceedings to the petitioner and afforded her an opportunity to file a supplementary reply, if any. By a letter dated 25th September, 2017, the petitioner sought an extension of time to file such supplementary reply, and upon receipt of the said request, the time for filing the supplementary reply was extended till 17th October, 2017.

16. The respondents contended that the VC is the Chairperson of the EC and that the said Council, being the higher authority of the University, is competent to initiate such proceedings. It was further contended that, in the present case, the EC was the appointing authority of the petitioner. According to the

respondents, disciplinary proceedings may be initiated by a higher authority, and the only requirement in law is that an employee should not be removed or dismissed from service by an authority subordinate to the delinquent employee.

17. The respondents filed two supplementary affidavits: one to place on record the resolution adopted by the EC in its meeting held on 28th August, 2017, and the other to bring on record certain facts and documents which, according to the respondents, have a bearing on the decision to be taken in the present writ petition. In the supplementary affidavit affirmed on 11th February, 2026, it was, inter alia, contended that the 7th EC of the University was constituted in 2012 and that Prof. Jayashree Roy was a member of the said 7th EC and not of the 8th EC. It was further stated that the 7th EC, in its meeting held on 21st July, 2014, decided to issue a charge-sheet against the petitioner, and accordingly, a charge-sheet dated 23rd July, 2014 was issued, and the petitioner was placed under suspension by a letter dated 21st July, 2014.

18. The show cause notice dated 16th June, 2014, the letter of suspension dated 21st July, 2014, and the charge-sheet dated 23rd July, 2014 were the subject matter of challenge in W.P. No. 22850 (W) of 2014 preferred by the petitioner. In the said writ petition, a similar issue was raised to the effect that the EC had no authority to initiate disciplinary proceedings against the petitioner; however, a Co-ordinate Bench of this Court, by an order dated 2nd September, 2014, dismissed the writ petition. An intra-court appeal was preferred against the said order, which was disposed of with a direction upon the disciplinary authority to conclude the disciplinary proceedings, and the concerned Enquiry Officer was also directed to submit his report.

19. Upon conclusion of the said enquiry proceeding, an enquiry report dated 21st April, 2015 was submitted. The petitioner also submitted her response to the said report. Upon consideration of the report, the relevant documents, and the petitioner's response, the EC, in its meeting held on 5th June, 2015, decided to withdraw the suspension and impose punishment. The said decision was communicated to the petitioner by a letter dated 29th June, 2015. However, challenging the said order of punishment, the petitioner preferred another writ petition, being WPA No. 23136 of 2015.

20. At the end of the term of the 7th EC, the 8th EC was constituted, and Prof. Jayashree Roy was not a member thereof. The then VC issued a show cause notice dated 14th June, 2016 to the petitioner on the basis of certain fresh allegations, to which the petitioner replied by her letter dated 28th June, 2016. Thereafter, the 8th EC, in its meeting held on 25th July, 2016, decided to initiate disciplinary proceedings against the petitioner, and accordingly, a charge-sheet dated 3rd November, 2016 was issued to her. It was specifically contended that the present writ petition has been preferred on a mere apprehension that the petitioner might be punished, and that such apprehension does not constitute a valid cause of action for invoking the writ jurisdiction of this Court.

**Contents of Affidavits-in-reply:**

21. The record reveals that the petitioner filed an affidavit-in-reply to the affidavit-in-opposition, as well as a further affidavit-in-reply and a rejoinder to the supplementary affidavits filed by the respondents. The sum and substance of the affidavit-in-reply is that, by her letter dated 9th July, 2017, the petitioner

stated that 'as of now, it is not possible for me to progress with the enquiry proceedings as it is already void ab initio as none can be judge of one's own case and unless an appropriate order is passed'. According to the petitioner, the said letter cannot be construed as a complete refusal to participate in the enquiry proceedings; rather, it was a request to the authority to review the decision appointing Prof. Roy as the Enquiry Officer.

22. That in the list of witnesses appended to the charge-sheet dated 3rd November, 2016, the members of the 7th EC were cited as witnesses and, therefore, according to the petitioner, Prof. Roy was also a witness and, as such, could not act as the Enquiry Officer. It was further contended by the petitioner that, in the earlier writ petition, being W.P. No. 22850 (W) of 2014, no issue regarding the authority of the EC to initiate disciplinary proceedings against the petitioner had been raised.

23. The petitioner contends that Agenda 6(f)(a) of the resolution dated 28th August, 2017 is a subsequently manufactured and fabricated document, intended to cover up the alleged illegalities committed by the Enquiry Officer. It is further alleged that the 8th EC approved the enquiry report before forwarding it to the petitioner for her response, reflecting a pre-determined approach and rendering such opportunity a mere formality.

24. The petitioner also submits that the Enquiry Officer independently examined and questioned witnesses and not by the Presenting Officer, and recorded their statements in the petitioner's absence. Although the resolution proposed giving the petitioner an opportunity to respond to those statements, she contends that

the procedure adopted was fundamentally flawed, in breach of the principles of natural justice, and vitiated by bias.

**Arguments:**

25. Mr. Sanyal, learned Senior Advocate, advanced arguments on behalf of the petitioner. The arguments of Mr. Sanyal, as crystallized, are as follows:

i) That the entire disciplinary proceeding, from its very inception, is vitiated by illegality, arbitrariness, and a complete failure to adhere to the principles of natural justice, is tainted with bias, and constitutes a colourable exercise of power undertaken with a pre-determined objective of removing the petitioner from service.

ii) That, in view of the omission of the word 'Teachers' from sub-section (21) of Section 2 and the substitution of the EC by the VC as the appointing authority for a University Assistant Professor in Section 29 of the Vidyasagar University Act, 1981, by virtue of the amendment introduced through the West Bengal University Laws (Amendment) Act, 2011 with effect from 2012, the VC alone is the appointing authority and, therefore, being a designated authority, alone has the authority to initiate disciplinary proceedings against a University Assistant Professor. However, in the present case, the disciplinary proceeding was initiated by the EC and, as such, the said proceeding stands vitiated.

iii) A decision reported in *(1993) 1 SCC 419* (*P.V. Srinivasa Sastry & Ors. vs. Comptroller and Auditor General & Ors.*) was cited for the proposition that, in the absence of a rule, any superior authority, being the controlling authority, may initiate disciplinary proceedings. It was, however, contended that, in the present case, since the statute mandates that the VC is the appointing authority, such power stands excluded in respect of any other authority, including the EC, notwithstanding the fact that the Council is a higher authority.

iv) Mr. Sanyal contended that where a statute designates a particular authority to perform a duty, such duty must be discharged by that authority alone. He further submitted that a departure from this principle is permissible only in the context of Article 311(1) of the Constitution. In support of this contention, he placed reliance upon the decision reported in *(2006) 4 SCC 348* (*A. Sudhakar vs. Postmaster General, Hyderabad &Anr.*). A reliance was also placed on the decision reported in *(1994) 5 SCC 346* (*Sahni Silk Mills (P) Ltd. &Anr. v. Employees' State Insurance Corporation*) in support of the contention that statutory power must be exercised only by the body or officer in whom it has been vested.

v) He claimed that, on the one hand, the charge-sheet suffers from vagueness and a lack of material particulars and, on the other hand, the articles of charge contained therein do not disclose any

misconduct. Referring to Charge No. I, which pertains to the impleadment of the VC and the Registrar in a writ petition and the sending of emails intimating such impleadment to the members of the EC, it is contended that such acts do not constitute misconduct.

vi) Referring to Charge No. II, it was argued that seeking information under the Right to Information Act cannot constitute misconduct and that the latter part of the charge rests on mere presumption. As regards Charge No. III, it was contended that the allegation of making statements to the press lacks clarity and, in any event, does not amount to a violation of the Official Secrets Act. It was further submitted that no notice alleging defamation has been issued to the petitioner.

vii) Referring to Charge No. IV, it was argued that lodging a diary or filing a complaint before the jurisdictional police authorities cannot amount to misconduct. As regards Charge No. V, it was contended that questioning the authority of the University or raising grievances before appropriate authorities is permissible in law, and that taking additional classes on holidays, in any event, does not constitute misconduct.

viii) With regard to Charge No. VI, which alleges that the petitioner remained absent for a specified period, it was contended that the petitioner had availed of earned leave upon submission of a proper application. With regard to Charges No. VII and VIII, it was argued

that both charges are vague, and with regard to Charge No. IX, it was contended that the same does not constitute misconduct.

ix) The second limb of argument advanced on behalf of the petitioner is that the appointment of the EO is vitiated by bias and, therefore, violates the principles of natural justice. Referring to pages 26 and 33, particularly paragraph 5(i) of the affidavit-in-opposition, it was contended that the EO, namely, Professor Jayashree Roy, was a member of the 7th ECwhich had framed the charges against the petitioner. In such capacity, she participated in and deliberated at the meeting of the EC held on 21.07.2014, wherein decisions were taken regarding the steps to be initiated against the petitioner.

x) Drawing the attention of the Court to the charge-sheet, particularly Charge No. IV and the imputation of conduct relating thereto, it was further contended that the said charge was founded upon a letter dated 26.06.2014 issued by the petitioner. Since the 7th EC had deliberated upon the said letter, it was urged that the EO had been involved in the initiation of the disciplinary proceedings against the petitioner, thereby giving rise to a reasonable apprehension of bias.

xi) It was contended that all the members of the 7th Executive Council (EC) were cited as witnesses in the charge-sheet issued against the petitioner, and Professor Roy was one of such witnesses. It was, therefore, urged that by acting as the Enquiry Officer, she

effectively became a judge in her own cause, which constitutes a violation of the principles of natural justice.

xii) A decision, reported in *(2009) 2 SCC 541 (Union of India & Ors. vs. Prakash Kumar Tandon)* was relied upon on behalf of the petitioner and contended that in this case, raid was conducted by the Vigilance Department and Chief of Vigilance Department was appointed as EO, the Hon'ble Supreme Court held that such appointment was not fair.A decision, reported in *(2000) 8 SCC 295 (Badrinath vs. Government of Tamil Nadu & Ors.)* was cited for the proposition that if the person involved in decision making process of initiating disciplinary proceeding is appointed as EO, there would be a strong case of likelihood of biasness. He asserted that element of bias is apparent when the individual who issued the charge sheet also participates in the decision-making process for initiating disciplinary proceedings or acts as a witness.

xiii) Another decision reported in *(2002) 2 SCC 290 (Amar Nath Chowdhury vs. Braithwaite and Co. ltd. and Ors.)* was referred to wherein the Hon'ble Supreme Court held that the appellate proceedings were vitiated by bias because the same individual who acted as the disciplinary authority also presided over the Board meeting that decided the appeal violating the maxim *nemo debet esse judex in propria causa* (no one should be a judge in their own cause).

xiv) Reliance was placed on the decision, reported in *(2006) 4 SCC 348 (A. Sudhakar vs. Postmaster General, Hyderabad and Anr.)* for the proposition that a major penalty can only be imposed by an officer who is either the actual appointing authority or a statutory designated authority of higher rank, and that even if a lower-ranking official is the "disciplinary authority", they cannot override the constitutional protection (Article 311) that prevents a government servant from being dismissed by an authority subordinate to the one who appointed them.

xv) The decision, reported in *(1995) 2 SCC 474 (Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank and ors.)* was referred to for the proposition that that if a higher authority passes a dismissal order instead of the designated disciplinary authority, the order is legally defective. Another decision reported in *(1994) 5 SCC 346 (Sahni Silk Mills (P) Ltd and anr. Vs. Employees' State Insurance Corporation)* was cited wherein it was held that the principle of *delegatus non protest delegare* establishes that a statutory authority cannot sub-delegate its power to another unless the law explicitly permits it and in disciplinary matters, a "strong presumption" exists that only the specifically named officer and no one else must exercise the power. Another decision *(1993) 1 SCC 419 (P.V. Srinivasa Sastry and ors. vs. Comptroller and Auditor General and ors.)* was cited wherein it

was held that Article 311 (1) strictly mandates that only the appointing authority can dismiss or remove a civil servant, but it does not require the same authority to initiate the disciplinary proceedings. Unless specific service rules state otherwise, any superior controlling authority can legally initiate an inquiry without violating constitutional guarantees.

xvi) A decision, reported in *(2008) 3 SCC 484 (Moni Shankar vs. Union of India and Anr.)* was referred to wherein the Hon'ble Supreme Court ruled that while the Evidence Act does not strictly apply to the departmental inquiries, the principles of natural justice and proportionality do. Reliance was placed on a decision, reported in *(2018) 7 SCC 670 (Union of India and ors. vs. Ram Lakhan Sharma)* for the proposition that the essential standard of natural justice is to provide the concerned person a reasonable opportunity of presenting their cases and the quasi-judicial inquiries must be conducted in good faith, without bias and not arbitrarily or unreasonably to prevent the miscarriage of justice.

26. Mr. Kar, learned Senior Advocate appearing for the University, respondent no. 1, argued on behalf of the University. Crux of that argument is as follows:

i) The petitioner preferred almost six writ petitions challenging various actions of the University authorities including the legality of the disciplinary proceedings initiated

against her. He claimed that the petitioner has developed a habit in creating a disturb to the authorities of the University in smooth functioning of the day-to-day affairs of the University.

ii) The petitioner was appointed by the EC of the University vide. appointment letter dated 29th September, 2004 and as such, EC is the appointing authority of the petitioner and the amendment introduced in 2011 cannot have any retrospective effect. Use of the words 'shall be substituted' in the W.B. University Laws (Amendment) Act, 2011 indicates that the 2011 Act is prospective in nature. A decision, reported at *(2006) 8 SCC 702 (MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and ors.)* was cited for the proposition that statutory provisions and notifications are presumed to be prospective in operation and do not affect accrued rights unless the express language or necessary implication specifically mandated a retrospective effect, and an amending notification cannot take away benefits from units established prior to its commencement if its language indicates it only applied to those set up after the certain date. Another decision *(2013) 5 SCC 111 (State of Andhra Pradesh and Ors. vs. Gandhi)* was referred to for the proposition that the amendments of service rules are presumed to be prospective and cannot be applied retrospectively to take away vested rights or impose penalties for

past conduct unless specifically mandated by express statutory language.

iii) It was contended that even assuming that the VC is the appointing authority by virtue of the amendment, EC is higher authority than the VC and as such, the disciplinary initiated by the authority higher than the appointing authority is legal and sustainable. To lend support to such contention, reliance was placed on the decision, reported in *(1996) 4 SCC 708 (Director General, ESI and Anr. Vs. T. Abdul Razak)* wherein the Hon'ble Supreme Court ruled that while statutory powers generally cannot be sub-delegated unless expressly authorized, disciplinary proceedings are valid if initiated by an authority specifically empowered through valid regulations or legislative delegation. Another decision, reported in *(1995) 1 SCC 332 (Transport Commissioner, Madras-5 vs. A. Radha Krishna Moorthy)* was cited for the proposition that the initiation of a disciplinary enquiry by an officer subordinate to the appointing authority is legally unobjectionable; only the final order of dismissal or removal is strictly required to be passed by the appointing authority or a superior.

iv) Relying on a decision reported in *(2012) 11 SCC 565 (Secretary, Ministry of Defence and ors. Vs. Prabhash Chandra Mirdha)*, it was contended that a disciplinary proceeding or a charge-sheet generally cannot be quashed at initial stage unless

issued by an authority lacking jurisdiction, as they do not adversely affect a party's rights unless a final order is passed. While a subordinate authority may legally initiate an inquiry or issue a charge-sheet, the ultimate penalty of dismissal or removal must only be imposed by the appointing authority or higher.

v) It was further contended that in 2014, another charge-sheet dated 23.07.2014 was challenged by the petitioner on the similar ground by preferring a writ petition, W.P. 22850 (W) of 2014; however, a Co-ordinate Bench dismissed by the writ petition by an order dated 2.9.2014 which was challenged in an intra-court appeal, MAT 1871 of 2014 but by an order dated 25th November, 2014, the appeal was dismissed and the disciplinary authority was directed to conclude the disciplinary proceeding against the petitioner on the basis of that charge-sheet.

vi) It was argued that Prof. Jayashree Roy was a member of 7th EC whereas the charge sheet forming the basis of the present writ petition was issued by the 8th EC of which she was not a member and therefore, there cannot be any conflict of interest and bias. Placing reliance upon the decision, reported in *(2012) 4 SCC 653 (N.K. Bajpai vs. Union of India &Anr.)*, it was argued that there is a difference between mere suspicion of bias and likelihood of bias and possibility of bias must be shown to be present to vitiate an action.

vii) It was claimed that the petitioner has preferred the present writ petition on mere apprehension that she may be punished without waiting for the final decision of the DA. He submitted that the DA may exonerate the petitioner also. Accordingly, he claimed that the present writ petition is pre-mature.

**Analysis and conclusion:**

27. Therefore, upon considering the pleadings and the submissions advanced by the parties, the following three points arise for consideration and determination:

(i) whether the disciplinary proceeding initiated by the Executive Council is sustainable in view of the amendments to Sections 2(21) and 29 of the Vidyasagar University Act, 1981;

(ii) whether the enquiry proceeding stands vitiated on account of the appointment of Prof. Roy as the Enquiry Officer and for alleged violation of the principles of natural justice; and

(iii) whether the charge-sheet is liable to be quashed on the ground that the allegations against the petitioner do not constitute misconduct.

**Point no. (i):**

28. Article 311 of the Constitution of India does not stipulate that only the appointing authority is competent to initiate disciplinary proceedings. Its mandate is confined to ensuring that no employee is dismissed or removed from

service by an authority subordinate to the appointing authority. It is well settled that disciplinary proceedings may be initiated either by the appointing authority or by an authority superior to it, as such initiation does not infringe the constitutional safeguard embodied in Article 311.

29. In State of Madhya Pradesh v. Shardul Singh, reported in *(1970) 1 SCC 108*, the Hon'ble Supreme Court ruled that Article 311(1) does not in terms require that the authority empowered by that provision to dismiss or remove an officer should initiate or conduct the inquiry. The Hon'ble Supreme Court held as follows:

> "8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly, it is held that this was not a permissible ground for quashing the charges by the Tribunal".

30. In *P. V. Srinivasa Sastry v. Comptroller and Auditor General, 1993 1 SCC 419* where the Hon'ble Court reiterated that a departmental proceeding need not be initiated only by the appointing authority and that initiation by a subordinate authority, in the absence of rules, is not vitiated. In this decision, it was ruled as follows:

> "Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority

subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages: the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority...."

31. Very recently, in the decision, reported in *AIR 2025 SC 1656 (State of Jharkhand & Ors. vs. Rukma Kesh Mishra)*, the Hon'ble Supreme Court reiterated such view, which have stood the test by time, with approval.

32. In the present case, following the amendments introduced to the Vidyasagar University Act, 1981 by the West Bengal University Laws (Amendment) Act, 2011, the Vice-Chancellor is presently the appointing authority of the petitioner; however, it is undisputed that the Executive Council is a higher authority. Although the amendment has altered the appointing authority of the petitioner, neither the statutory provisions nor any other legislation confers exclusive authority upon the Vice-Chancellor to initiate disciplinary proceedings, to the exclusion of a superior authority. In such circumstances, the petitioner's reliance on decisions propounding that where a statute designates a particular authority

to perform a duty, such duty must be performed by that authority alone, is misplaced. The initiation of disciplinary proceedings by the Executive Council, being an authority higher than the appointing authority, cannot be said to be vitiated on that ground.The point no. (i) is thus determined in favour of the respondents.

**Point no. (ii):**

33. Admittedly, Prof. Jayashree Roy was a member of the 7th Executive Council, as is evident from the resolution adopted in its 25th meeting, appearing at page 26 of the affidavit-in-reply. Resolution No. 5(i) indicates that, in relation to the lodging of a General Diary and FIR by the petitioner with the Inspector-in-Charge, Kotwali P.S., Midnapore, and the Superintendent of Police, Paschim Medinipur, as well as her letter dated 26.06.2014, the 7th Executive Council resolved to take necessary action against the petitioner in accordance with the extant University rules.

34. Article IV of the charge-sheet further reflects that, by lodging such complaints in 2013 and 2014 against certain senior colleagues, the petitioner was alleged to have committed misconduct in violation of Ordinances 150, 151, 155, and 158, and 159(c) and (e) of the Vidyasagar University First Ordinances, 1985. Thus, it is evident that Prof. Roy, being a member of the 7th Executive Council, was a party to the decision to initiate departmental actions against the petitioner. It is also an admitted position that Annexure IV to the charge-sheet, containing the list of witnesses, includes all members of the 7th EC. Consequently, Prof.

Jayashree Roy was also cited as a witness. Furthermore, the petitioner claimed that Prof. Roy was one of the respondents in a writ petition preferred by her.

35. The petitioner raised an objection to the appointment of Prof. Roy as the Enquiry Officer; however, such objection was not heeded, and the enquiry proceeded. The first page of the enquiry report indicates that the list of witnesses to be examined and the documents to be produced on behalf of the University were finalized by the EO herself. The petitioner contended that certain colleagues, against whom she had earlier lodged complaints, were selected to depose against her, thereby suggesting that the EO effectively assumed the role of the Presenting Officer.

36. The report further reflects that on 09.01.2017, being the first date of enquiry, only two persons were permitted to remain present at a time—either the EO and the petitioner, or the EO and one of the witnesses. This clearly indicates that the witnesses were examined in the absence of the petitioner. It is also recorded in the enquiry report that the EO independently prepared questionnaires and utilized the same during the examination of each witness.

37. The enquiry report indicates that, after recording the depositions, draft copies were furnished to the witnesses for corrections, modifications, and clarifications, and were thereafter finalized. It further reveals that the Enquiry Officer framed three issues, with the second, according to Mr. Sanyal, amounting to the introduction of a fresh charge. The report also records that the Presenting Officer produced documents as required by the Enquiry Officer, who, from a long list of witnesses, prepared a shortlist and called upon the petitioner to depose. Although copies of the depositions were not supplied to the petitioner, her letter

dated 17.11.2016 was treated as her evidence on the ground that she declined to participate in the enquiry proceedings.

38. Furthermore, the EO did not undertake an analysis of the evidence on an article-wise basis, but instead proceeded to decide the issues framed by her. It is well settled that even in an ex parte proceeding, it must be examined whether the evidence on record is sufficient to substantiate the charges.

39. When an officer is appointed as the Inquiring Authority or Disciplinary Authority, *he* assumes the role of an impartial adjudicator. In this capacity, it is incumbent upon *him* to independently assess whether the management has successfully established the charges of misconduct, without being influenced by any preconceived notions or biases. Indisputably, the purpose of an inquiry is not tosomehow establish the charges against the delinquent, but to uncover the truth.

40. The basic concept of fair play in action is squarely applicable in administrative, judicial and quasi-judicial field. When an authority assumes jurisdiction to discharge quasi-judicial function, then such authority must act fairly, impartially and without any bias or pre-determined mind. If the court finds that authority has acted arbitrarily with closed mind and in violation of rules of natural justice and in derogation of the statutory rules, the Court can extend the compass of judicial review to render justice.

41. In a departmental enquiry entailing adverse or penal consequences, there must be fair play in action and investigations into the charges in accordance with the principles of natural justice and the rules and/or regulations in vogue. Procedural fairness is as much as an essence of right and liberty as the substantive law itself.

42. Mr. Kar heavily relied on the decision of N.K. Bajpai(supra) to contend that there is a difference between suspicion of bias and likelihood of bias. He claimed that there was a suspicion of bias in the mind of the petitioner. In this decision, it was also held that likelihood of bias would be the possibility of bias and bias which can be shown to be present and the correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias. The test of bias is whether a reasonable man, fully aware of the facts, would have a reasonable apprehension that the inquiry officer would not act impartially.

43. It is a well-settled principle of law that a person cannot simultaneously act as a disciplinary authority and a witness in the same proceeding. Where the Enquiry Officer was involved in the decision to initiate disciplinary proceedings and is also cited as a witness, it gives rise to a real likelihood of bias, in violation of the principles of natural justice, thereby vitiating the enquiry. The governing maxim is *nemo judex in causa sua* (no one should be a judge in their own cause).In support of this proposition, reliance may be placed on the decisions in *Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and Others*, *(1993) 4 SCC 10*, and *Mohd. Yunus Khan v. State of Uttar Pradesh and Others*, *(2010) 10 SCC 539*. Bias is evident where the authority issuing the charge-sheet also participates in the decision-making process or appears as a witness; in such circumstances, prejudice to the delinquent employee is inherent, rendering the proceeding void.

44. The legal maxim nemo debet esse judex in propria causa (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (See, the judgments delivered in cases of *Secy. to Govt., Transport Deptt. v. Munuswamy Mudaliar [1988 Supp SCC 651 : AIR 1988 SC 2232] , Meenglas Tea Estate v. Workmen [AIR 1963 SC 1719] and Mineral Development Ltd. v. State of Bihar [AIR 1960 SC 468]*.

45. In *A.U. Kureshi v. High Court of Gujarat, (2009) 11 SCC 84*, Hon'ble Supreme Court held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision and it is undeniable that the existence of an element of bias renders the entire disciplinary proceedings void.

46. In the present case, admittedly, 7th EC took decision to take departmental against the petitioner. Therefore, Prof. Roy being a member of the 7th EC was a party to that decision, in the charge-sheet, she was cited as a witness and she was subsequently appointed as EO. For this reason alone, the enquiry proceeding stood vitiated.

47. In the present case, it was EO herself, who short-listed the witnesses to be examined. The PO presented the documents as desired by her. She independently

prepared the questionnaires. Therefore, she acted as presenting officer. Needless to state that if the EO acts as a prosecutor, the proceedings are vitiated. In a decision, reported in *AIR 1961 SC 1623 (State of M.P. v. Chintaman Sadashiva Waishampayan)*, the Hon'ble Supreme Court held that the inquiry is vitiated if the Inquiry Officer assumes the role of a prosecutor.

48. Therefore, applying the propositions laid down in those decisions, I am of the view that enquiry proceeding stood vitiated as the principles of natural justice had been completely disregarded by the DA and the EO. Thus, the point no. (ii) stands determined.

**Point no. (iii):**

49. As noted previously, in the present case, the petitioner seeks quashing of the charge-sheet on the grounds that the allegations contained therein do not constitute misconduct, that the proceeding was initiated with malice and a pre-determined objective, and that the entire enquiry has been conducted in derogation of the principles of natural justice.In rebuttal, Mr. Kar citing the decision of Secretary, Ministry of Defence and ors. Vs. Prabhash Chandra Mirdha (*supra*), contended that a writ petition does not lie against a charge-sheet or show cause notice, as the same does not give rise to a cause of action. A writ remedy becomes available only upon infringement of a legal right. A charge-sheet, by itself, does not amount to an adverse order affecting the rights of a person. It is only upon the passing of a final order, imposing punishment or otherwise prejudicially affecting the employee, that a cause of action may arise warranting judicial review.

50. A charge-sheet constitutes the foundational document in a departmental enquiry, setting out the allegations of misconduct against the delinquent employee. It ordinarily marks the commencement of the disciplinary process, wherein the employee is called upon to submit a response, followed by an enquiry, and culminating in a final decision by the competent authority.

51. Admittedly, in exercise of its discretionary jurisdiction, a writ court does not ordinarily interfere with or quash a charge-sheet or show cause notice.However, that does not mean that a charge-sheet cannot be quashed and/or set aside in exercise of writ jurisdiction. It is well-settled that a charge sheet can be quashed if the alleged acts do not constitute misconduct, or if the charge-sheet are completely illegal, without jurisdiction, or violate fundamental rights or when there was a massive delay in initiating the proceeding and the delinquent employee has been prejudice to defend himself.In the decision, reported at *(2006) 6 SCC 28* (Union of India v. Kunisetty Satyanarayana), it was held that charge-sheet can be quashed only in rare and exceptional cases, such as where the charge-sheet is issued wholly without jurisdiction or is otherwise patently illegal.On the ground of misconduct, a charge-sheet can be quashed if the allegations, even if taken to be true at their face value, do not constitute misconduct.

52. In the decision, reported at *(1984) 3 SCC 316 (A.L. Kalra vs. Project and Equipment Corporation of India Ltd.)*, it was held that what in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on

the employer to specify and if necessary, define it with precision and accuracy so that any *ex post facto* interpretation of some incident may not be camouflaged as misconduct.

53. There can be no dispute in accepting the proposition that the term 'misconduct' is incapable of precise definition. Terms like 'misconduct' cannot be exhaustively defined, and it is not possible to compile a comprehensive list of actions or enumerate the specific actions in any Service Rule that would constitute misconduct or misbehaviour. It may involve moral turpitude, improper or wrongful behaviour, unlawful conduct, wilful actions, forbidden acts, or a transgression of an established and definite rule of conduct or code of behaviour.

54. However, in the present case, the petitioner was charged with filing W.P. No. 23136 (W) of 2015, impleading the Vice-Chancellor and the Registrar by name with distorted addresses, and circulating emails intimating such impleadment, allegedly with the intent to cause disruption, show disregard to the authorities, and destabilize the functioning of the University and its Executive Council under the guise of the writ petition. It was further alleged that she sought information under the Right to Information Act, which the Disciplinary Authority had reason to believe was subsequently shared with the press, and that she lodged a General Diary and a complaint before the jurisdictional police authorities against certain colleagues without prior sanction of the EC. The charge-sheet also refers to an email sent by the petitioner to the Vice-Chancellor requesting circulation of its

attachment among members of the Executive Council.The remaining charges are vague and lack the necessary specificity and clarity.

55. It is difficult to discern how the filing of a writ petition, lodging of a General Diary or complaint before the police authorities, or submission of an application under the R.T.I. Act can constitute misconduct; and further, how an employee, who has ultimately been granted earned leave, can be charged with unauthorised absence; or how an Assistant Professor can be proceeded against for sending e-mails to the personal e-mail address of the Vice-Chancellor; or how, on a mere presumption that the petitioner had leaked certain information to the press, a disciplinary proceeding can be initiated. In this context, the contention of Mr. Sanyal that such allegations do not constitute misconduct cannot be completely disregarded. Yet, without expressing any concluded opinion on these issues, it can be held that the charge-sheet cannot be sustained and the disciplinary proceeding cannot be permitted to continue for the reasons recorded hereinafter.

56. However, in the peculiar facts of the present case, it is significant to note that in the meeting of the 7th EC, issues relating to the petitioner's lodging of a General Diary and complaints against certain colleagues were deliberated upon and subsequently formed part of Article IV of the charges. In the charge-sheet, all the members of the 7th EC have been cited as witnesses, and the persons against whom the petitioner had lodged the General Diary and complaints have also been cited as witnesses, who later deposed against her. Though Prof. Jayashree Roy was a member of the 7th EC and a participant in the decision to initiate departmental action against the petitioner, she was appointed as the Enquiry Officer. During the enquiry proceeding, the Enquiry Officer shortlisted the

witnesses, directed the Presenting Officer to produce documents, and herself prepared the questionnaires and examined the witnesses, particularly those colleagues against whom the petitioner had made complaints. In doing so, the Enquiry Officer effectively assumed the role of a prosecutor. The enquiry report does not reflect an objective assessment of the evidence to ascertain the truth; rather, it indicates a predisposition towards reaching a predetermined conclusion.

57. After the enquiry report had been accepted and approved by the Executive Council, the petitioner was called upon to submit her representation. These circumstances, taken cumulatively, suggest a pre-determined mindset on the part of the Disciplinary Authority. If the charge-sheet is allowed to stand, there remains a real likelihood that the Enquiry Officer, along with individuals against whom the petitioner had made allegations, would depose against her, giving rise to a reasonable apprehension of bias. The conduct of the entire disciplinary proceeding thus indicates that the Disciplinary Authority and the Enquiry Officer failed to act as independent and impartial arbiters, as required under the principles of natural justice. If such a composition of witnesses is retained in the charge-sheet, the possibility of a fair proceeding would be seriously compromised.

58. In disciplinary matters, a writ court does not ordinarily substitute its own findings for those of the disciplinary authority. Where the enquiry or decision-making process is found to be vitiated by procedural defects, such as violation of the principles of natural justice, non-consideration of relevant materials, or reliance on inadmissible evidence, the usual course is to remit the matter to the

competent authority from the stage at which the defect occurred for continuation in accordance with law. However, in the present case, the very initiation and conduct of the disciplinary proceeding standvitiated, inasmuch as the members of the 7th Executive Council, who were parties to the decision to initiate disciplinary action, have been cited as witnesses; one such member has been appointed as the Enquiry Officer; and persons against whom the petitioner had lodged complaints have been called upon to depose. In such circumstances, relegating the matter for fresh consideration would be an exercise in futility and would have a deleterious effect on the employee. Accordingly, the disciplinary proceeding cannot be sustained.

59. Therefore, applying the propositions laid down in the decisions cited in the preceding paragraphs and based on the discussion made in foregoing paragraphs, in the present case, it would be apposite to quash the charge-sheet also.

**Order:**

60. In view of the above, the charge-sheet dated 3.11.2016, the decision of the DA appointing Prof. Jayashree Roy as EO, the enquiry report dated 28.04.2017, the decision of the 8th EC taken in its meeting dated 12.07.2017 in so far as it accepted and/or approved the enquiry officer, are set aside.

61. With these observations and order, the writ petition is, thus, disposed of; however, there shall be no order as to the costs.

**(Partha Sarathi Chatterjee, J.)**