

HITENDRA SINGH S/O BHUPENDRA SINGH & ORS.

v.

DR. P. D. KRISHI VIDYAPEETH BY REG. & ORS.

(Civil Appeal No. 4412 of 2014 etc.)

APRIL 04, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

MAHARASHTRA AGRICULTURE UNIVERSITY ACT,
1983:

ss. 6, 11 and 15 - Power of Chancellor to appoint Committee to inquire into illegalities and irregularities in selection and appointment of Senior Research Assistants and Junior Research Assistants - HELD: Inquiry directed by Chancellor into illegalities and irregularities of selection process in appointment of Senior and Junior Research Assistants was legally permissible -- Exercise of such power is not subject to any limitation or impediment because the power is vested in a high constitutional functionary who is expected to exercise the same only when such exercise becomes necessary to correct aberrations and streamline administration so as to maintain the purity of the procedures and process undertaken by the University in all spheres dealt with by it.

ss. 11 and 15 - Report of Justice Dhabe Committee that entire selection process was vitiated by illegalities, irregularities and improprieties and, therefore, appointments made need to be set aside - Accepted by Chancellor and appointments cancelled - Compliance of principles of natural justice - Held: Justice Dhabe Committee had issued notices to the appointees who had in turn responded to the same - Therefore, it cannot be said that principles of natural justice were violated by the Committee especially when no prejudice is demonstrably caused to petitioners on account of

- A *procedure which the Committee followed in concluding the enquiry proceedings - Further, in compliance with orders passed by Chancellor, Vice Chancellor of University issued notices to appointees calling upon them to appear before him for a personal hearing in support of their selection and*
- B *appointment as SRAs/JRAs -- The appointees filed their responses in required format - They were also given an opportunity of being heard by Vice Chancellor -- Thus, Vice Chancellor had acted fairly, and fully complied with principle of natural justice - No further hearing was required to be*
- C *repeated by Chancellor, who had before him the recommendations of Executive Committee and Vice Chancellor and took a final view of the matter having regard to the totality of circumstances - Continuance in office of those selected by means that are not fair, transparent and*
- D *reasonable will amount to perpetuating the wrong - Therefore, appointments were rightly set aside by Chancellor - Directions give for constituting of Selection Board in terms of Amendment Act 32 of 2013 and for selection afresh giving age relaxation to appellants, and on their selection to give them benefit of continuity of service - Service law -*
- E *Administrative law - Principles of natural justice - Audi alteram partem.*

- Complaints to the Governor and Chancellor of the University and writ petitions before the High Court were**
- F **filed alleging illegalities and irregularities in the selection of 76 Senior Research Assistants and 55 Junior Research Assistants. The Chancellor in terms of s. 11 of the Maharashtra Agriculture Universities Act, 1983, appointed Justice Dhabe Committee to examine the**
- G **papers relating to the selection and appointments of the candidates and to submit a report as to its fairness. The Committee submitted its report concluding that the entire selection process and selection of the candidates to the posts of SRA and JRA was vitiated by the illegalities,**
- H **irregularities and improprieties and, therefore, the**

appointments made pursuant thereto, need to be set aside. The Chancellor cancelled the appointments both of Senior Research Assistants and of Junior Research Assistants. Ultimately, individual letters were issued to them terminating their services. The writ petitions filed by the appointees were dismissed by the High Court.

In the instant appeals, the following questions arose for consideration of the Court:

- 1) Was the Chancellor competent to appoint a single Member Committee headed by Justice H.W. Dhabe to examine the illegalities, irregularities, fairness and impropriety of the selection process and consequent appointments to the cadre of SRAs and JRAs?
- 2) Were the inquiry proceedings entrusted to Justice Dhabe Committee conducted in accordance with the principles of natural justice?
- 3) Were the findings recorded by Justice Dhabe Committee in any manner illegal or perverse to warrant interference with the same by a writ Court?
- 4) Was the procedure adopted by the University and the Vice Chancellor fair and reasonable and in consonance with the principles of natural justice?
- 5) Was the Chancellor of the respondent-University and the High Court justified in declining the prayer of the petitioners for continuance in service on account of the time lag between the date of their appointments and the date on which their services were terminated?

A Dismissing the appeals, the Court

HELD:

Question No. 1:

- B 1.1 Creation of teaching, research and education posts required by the University being one of the functions of the University and appointment of suitable persons against such posts being also one of such functions, the power of the Chancellor to direct an inquiry
- C u/s. 11(1) of the Maharashtra Agriculture University Act, 1983, can extend to any process leading to such appointments. The term 'administration of the University' appearing in sub-s. (1) of s. 11 would, include every such activity as is relatable to the functions of the University,
- D u/s. 6. Selection of persons suitable for appointment and appointments of such persons would logically fall within the expression "administration of the University" within the meaning of s. 11(1) of the Act. Section 15 (5) vests the Chancellor with the power to annul any proceeding of any officer or authority if the same is not in conformity
- E with the provisions of the Act, the statutes or the Regulations or which is prejudicial to the interest of the University. A conjoint reading of ss. 11 and 15, leaves no manner of doubt that the Chancellor exercises ample powers in regard to the affairs of the University and in
- F particular in regard to the affairs of the administration of the University. The power vested in the Chancellor u/s. 11 to direct an inspection or an inquiry into matters referred to in the said provision is very broad and vests the Chancellor with the authority to direct an inspection
- G or an inquiry whenever warranted in the facts and circumstances in a given case. The exercise of such power is not subject to any limitation or impediment understandably because the power is vested in a high constitutional functionary who is expected to exercise the
- H same only when such exercise becomes necessary to

correct aberrations and streamline administration so as to maintain the purity of the procedures and process undertaken by the University in all spheres dealt with by it. Therefore, the inquiry directed by the Chancellor into the illegalities and irregularities of the selection process culminating in the appointment of Senior and Junior Research Assistants was legally permissible. [Para 15 - 16] [739-H; 740-A-D; 741-E-H; 742-A]

1.2 Justice Dhabe Committee was constituted by the Chancellor for holding a detailed inquiry into the allegations. The petitioners were not only aware of the fact about the pending writ proceedings but also about the constitution of Justice Dhabe Committee, which had issued notices to the appointees who had in turn responded to the same. The constitution of Justice Dhabe Committee was never questioned by the petitioners. While the findings recorded by the Inquiry Committee could be assailed, the challenge to the setting up of the Committee was clearly untenable not only because there was no merit in that contention but also because having taken a chance to obtain a favourable verdict, the petitioners could not turn around to assail the constitution of the Committee itself. [Para 17] [742-E-F, G-H; 743-B-C]

Question No. 2:

2. The petitioners had unsuccessfully challenged Justice Dhabe Committee Report before the High Court on the ground that principles of natural justice had not been complied with by the Committee. The High Court has rightly noted that Justice Dhabe Committee had issued notices to each one of the petitioners asking for their explanation which the petitioners had submitted. The petitioners had candidly admitted in the writ petition itself that upon receipt of notices from the Committee they had appeared and filed their affidavits before the

- A Committee. The Committee had, associated the petitioners with the proceedings by inviting them to appear and participate in the same, heard them and considered their version. Therefore, it cannot be said that principles of natural justice were violated by the Committee especially when no prejudice is demonstrably caused to the petitioners on account of the procedure which the Committee followed in concluding the enquiry proceedings. [Para 18] [743-C-E, F-H; 744-F-G]

C Question No. 3:

- D 3.1 Findings recorded by Justice Dhabe Committee were based on facts discovered in the course of the inquiry. No serious attempt was made before the High Court nor even before this Court to challenge the said findings of fact. Even otherwise, a fact finding inquiry instituted by the Chancellor was bound to involve appraisal of evidence, documentary and oral. The conclusions drawn on the basis of such appraisal were open to critical evaluation by the authorities before whom the conclusions and the Report was submitted for action but once such conclusions, are upon a careful re-appraisal found to be justified, a writ court will be very slow in interfering with the same. [Para 19] [744-H; 745-A-C]

- F 3.2 In the instant case, upon receipt of the report from Justice Dhabe Committee, the matter was directed to be placed before the Executive Council of the University, which without any reservation approved the findings recorded by Dhabe Committee, no matter with a recommendation to the Chancellor to take a lenient view in the matter, having regard to the fact that the petitioners had already served the University for nearly six years. The recommendation of the Executive Council did not, however, find anything amiss with the conclusions drawn by the Dhabe Committee as to the irregularities in the

selection process culminating in illegal appointments of the selected candidates. The Chancellor also took the view that the entire selection stood vitiated by widespread irregularities. There is no reason to interfere with the findings recorded by Justice Dhabe Committee that the sanctity of the entire selection process was vitiated by irregularities and acts of nepotism. [Para 20] [745-C, D-F, G-H; 746-A]

Question No. 4:

4.1 In compliance with the orders passed by the Chancellor, the Vice Chancellor of the University issued notices to the appointees calling upon them to appear before him for a personal hearing in support of their selection and appointment as SRAs/JRAs. The appointees filed their responses in the required format and were also given an opportunity of being heard by the Vice Chancellor. The High Court has correctly concluded that the petitioners had failed to establish that the Vice Chancellor had either violated the principles of natural justice or that any prejudice was caused by the procedure adopted by him in offering them a hearing. Thus, the Vice Chancellor acted fairly and he fully complied with the principle of natural justice. [Para 21] [746-B-D, E-F, G-H]

4.2 The requirements of audi alteram partem are not capable of a strait jacket application. Their application depends so much upon the nature of the tribunal that is deciding the matter, the nature of the inquiry that is being made and the consequences flowing from the determination. A notice to the petitioners who were likely to be affected and a hearing afforded to them apart from written responses filed in reply to the notices was a substantial compliance with the principles of natural justice. No further hearing was required to be repeated by the Chancellor, who had before him the

A recommendations of the Executive Committee and the Vice Chancellor and took a final view of the matter having regard to the totality of the circumstances. There is no error of law in the view taken by the High Court to warrant interference. [Para 21 & 22] [746-H; 747-A-C]

B Question No. 5:

5.1 The Chancellor declined to show any leniency to the petitioners, no matter they had served the University for over six years, primarily because the entire selection process was in his opinion vitiated by widespread irregularities in the selection process. The findings recorded by Justice Dhaba Committee upon a detailed and thorough examination of the matter fully supported that view of the Chancellor. The reasons that prevailed with the Chancellor cannot be said to be illusory or irrelevant so as to call for interference from a writ Court. The Chancellor was dealing with a case where the Selection Committee had called a large number of candidates for interview without following the proper procedure as prescribed by the State Government leading to the appointment of undeserving candidates by manipulation and favouritism. The Chairman and the Member Secretary of the Selection Committee had on their own increased the number of posts of SRAs and JRAs to be filled upon. All aspects were considered by Justice Dhaba Committee in its report which concluded that the entire selection process was vitiated. That beneficiaries of such faulty selection process should hold on to the benefit only because of lapse of time would be travesty of justice especially when deserving candidates were left out. [Para 23] [747-H; 748-A-C, F-G]

5.2 Continuance in office of those selected by means that are not fair, transparent and reasonable will amount to perpetuating the wrong. Continuance of the petitioners in service would not, be justified having regard to the

background in which the selection and appointments were made and eventually set aside by the University. All that the long years of service rendered with the University may secure for the appellants is a direction to the effect that in any future selection against the vacancies caused by their ouster and other vacancies that may be available for the next selection, the petitioners shall also be considered in relaxation of the upper age limit prescribed. Such of the petitioners who appear in the next selection and succeed, will also have the benefit of continuity of service. [Para 23 - 24] [748-H; 749-E-G]

Constituting of Selection Board and recruitment afresh:

6.1 In view of the amendment of 1983 Act in term of Maharashtra Act No. XXXII of 2013, establishment of a Selection Board and formulation of proper procedure to be followed by the Board will go a long way in making the process of selection and recruitment objective, fair and reasonable apart from bringing transparency to the norms and the process by which such recruitments were made. [Para 25] [750-A-B, E]

6.2 This Court directs that the respondent-University shall take necessary steps for constituting the Selection Board in terms of s. 58 of the Act as amended by Maharashtra Act No. XXXII of 2013 and advertise the vacancies currently available, together with the posts that are held by the appellants for recruitment in accordance with the procedure that may be prescribed in accordance with law. The appellants shall also be allowed to apply and participate in the selection process against the vacancies so advertised in relaxation of the upper age limit prescribed for such recruitment. For a period of six months or till the process of selection and appointment based on the selection process is completed by the respondent, whichever is earlier, the appellants shall be allowed to continue in service on the same terms as are currently applicable to them. In case any one of the

A appellants is selected by the new selection process, he shall be granted benefit of continuity of service. [Para 26] [750-G-H; 751-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4412 of 2014.

B

From the Judgment and order dated 16.08.2012 of the High Court of Bombay at Nagpur in WP No. 238 of 2012.

WITH

C Civil Appeal Nos. 4413, 4414 and 4415 of 2014.

P.P. Rao, Shantanuu Khedkar, Satyajit A. Desai, somanath Padhan, Anagha S. Desai, Anuradha Mutatkar for the Appellants.

D Sanjay Kharde, Abhay Sambhre, Preshit Surshe, Amol Nirmalkumar Suryawanshi, Akshat Kulsreshtha, Swarnendu Chatterjee, Surajit Bhaduri for the Respondents.

The Judgment of the Court was delivered by

E T.S. THAKUR, J. 1. Leave granted.

2. These appeals arise out of a common Judgment and Order dated 16th August, 2012 passed by the High Court of Judicature at Bombay, Nagpur Bench whereby writ petitions No.238, 247, 251 and 389 of 2012 filed by the appellants, herein, have been dismissed and the orders passed by the respondents terminating their services affirmed.

3. Dr. Punjabrao Deshmukh Krishi Vidyapeeth invited applications for appointment against 24 vacancies in the cadre of Senior Research Assistants and 37 vacancies in the cadre of Junior Research Assistants. As many as 3214 applications were received from eligible candidates against 61 posts so advertised. Appointments based on the selection conducted by the Selection Committee concerned were all the same made for as many as 131 posts out of which 76 appointments were made against the posts of Senior Research Assistant while the

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remaining 55 were made in the cadre of Junior Research Assistants. It is common ground that the selection process was based on a total weightage of 100 marks for each candidate out of which 40 marks were reserved for educational qualification of the candidate and his/her experience while the remaining 60 marks were set apart for viva-voce examination.

4. Several complaints appear to have been made against the selection process and the resultant appointments made by the University. Some of these complaints were in the form of writ petitions filed before the High Court of Bombay at Nagpur while some others were addressed to His Excellency, the Governor of Maharashtra who happens to be the Chancellor of the University. Out of the writ petitions filed against the selection and appointment process, Writ Petition No.4771 of 2006 inter alia prayed for a direction to the Chancellor to institute an inquiry under Section 11 of the Maharashtra Agriculture Universities (Krishi Vidyapeeth) Act, 1983 in regard to the illegalities and irregularities committed in the selection and consequent appointments against the vacancies referred to above. By an Order dated 21st April, 2007 passed by the High Court in the said petition, the Chancellor was directed to take a decision in the matter on or before the 14th August, 2007. Two other writ petitions were similarly filed before the High Court of Nagpur challenging the selection and appointment process. In writ petition No.342 of 2006 filed by Shri H.S. Bache, the High Court passed an interim order to the effect that the selection of the candidates shall remain stayed subject to the further orders of the Court. Writ Petition No.905 of 2006 filed by Archana Bipte and another also assailed the validity of the selection and appointment process undertaken by the University on several grounds.

5. It was in the above backdrop that the Chancellor invoked his powers under Section 11 (1) of the Maharashtra Agricultural Universities Act, 1983 and appointed Mr. Justice H.W.Dhabe, a former Judge of the High Court of Bombay to

- A examine the papers relating to the selection and appointment of the candidates concerned against the posts referred to above and to submit a report to the Chancellor as to the fairness of the selection of the candidates appointed by the University. A reading of the order passed by the Chancellor
- B would show that apart from several allegations made by Dr. B.G. Bhathakal, Ex-Vice Chancellor of the University and four others, the Chancellor had before him, a report dated 8th November, 2006 submitted by the Director General MCAER Pune from which the Chancellor noticed several irregularities
- C allegedly committed in the process of selection such as violation of Statute 52, holding of common interviews for both Senior and Junior Research Assistants, appointing meritorious candidates from the reserved category seats instead of appointing them in the open merit category, selection of as many as 22 relatives of officers/employees of the University,
- D absence of any short-listing of candidates for purposes of interview even when the applications were far in excess of the advertised vacancies. There were also allegations of the selection process not being transparent apart from allegations to the effect that the norms for academic evaluation and viva voce examination had been flouted.
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6. With the constitution of the Justice Dhabe's Committee writ petition No.4771 of 2006 titled Dr.Balwant and Anr. versus His Excellency the Chancellor of Dr.Punjabrao Deshmukh Krishi
- F Vidyapeet & Ors. and writ Petition No.905 of 2006 titled Ms. Archana and Anr. V. State and Ors. were both disposed of with the observation that Justice Dhabe Committee was constituted to examine the complaints made by the writ petitioners and connected issues was expected to submit its report to the
- G Chancellor making it unnecessary for the Court to undertake any such exercise in the said petitions.

7. Proceedings before Justice Dhabe Committee started with the issue of notices to those appointed informing them about the establishment of the Committee to inquire into the
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fairness of the selection process and calling upon them to appear in person before the Committee and to file affidavits and documents, if any, to justify their selection and appointment. It is not in dispute that the appellants received the said notices and acknowledged the same by filing their respective affidavits. The appellants were in the meantime informed by the University that they had completed their period of probation satisfactorily but the declaration to that effect was to remain subject to the outcome of writ petitions No.342 of 2006 and 4771 of 2006.

8. Justice Dhabe Committee took nearly 3½ years to complete the inquiry and to submit its report to the Chancellor in which the entire process of selection and appointment came under severe criticism questioning the fairness of the selection process and the resultant appointments. The High Court has summed up the substance of the findings and conclusions arrived at by Justice Dhabe in the following words:

- 1) *As large numbers of candidates were called for interview, without following proper ratio as prescribed by the State government, it has led to selection of undeserving and less meritorious candidates by manipulation, favouritism and other malpractices etc.*
- 2) *Although the posts of SRA and JRA belonged to two separate cadres with different pay scales, different qualifications and duties and responsibilities, the Selection Committee held common interviews for the said posts and vitiated the selection of the candidates as their suitability could not have been properly judged in such interviews for the said posts.*
- 3) *The criteria for assessment of the candidates for the posts of SRA/JRA were illegal.*
- 4) *The Selection Committee has awarded marks for*

- A *Ph.D. Thesis submitted, research papers/popular articles published and significant contribution made after the last date of application i.e. 15.09.2004 by resorting to illegal marking system.*
- B 5) *The Selection Committee gave higher weightage to the performance in interview as compared to academic performance.*
- 6) *The procedure followed by the Selection Committee for awarding marks to the candidates for academic performance and performance in interview was illegal and invalid.*
- C 7) *There was tinkering in mark sheets of the candidates. In some of the cases the mark sheets were not prepared in the meeting of the Selection Committee and they were also not placed before any of its meeting for its consideration and approval.*
- D 8) *The Chairman and the Member Secretary of the Selection Committee on their own without any authority or power in them increased the number of posts of SRA and JRA to be filled in.*
- E 9) *Category wise distribution of 55 posts of SRA and 76 posts of JRA was not made according to the prescribed percentage for each of the backward classes and open category as per the relevant GRs.*
- F 10) *The selection lists for the posts of SRA and JRA were not prepared or considered and approved in the meeting of the Selection Committee. There were lacunae, deficiencies, illegalities and irregularities in preparation of the selection list.*
- G 11) *Though in the advertisement it was specifically*
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- provided for wait lists to be prepared for the near future vacancies, no wait lists were prepared by the Selection Committee.* A
- 12) *The Selection Committee did not discharge any of its duties and responsibilities in the selection process.* B
- 13) *The entire selection process and selection of candidates pursuant thereto for the posts of SRA and JRA is vitiated by bias of Dr. V.D. Patil, Chairman of the Selection Committee.* C
- 14) *As per the findings of Justice Dhabe, favouritism has occurred in the process of selection to the posts of SRA and JRA*
- 15) *The qualification of Bachelor's degree in Agriculture Engineering was introduced as an additional qualification for the post of JRA as per the addendum dated 06.09.2004 to the advertisement dated 14.08.2004 in which the posts of JRA were advertised with the qualification of Bachelor's degree in Agriculture.* D E
- 16) *Preparation of the minutes of various meetings of the Selection Committee were not recorded faithfully and confirmed by its other members. The proceedings/minutes of the meetings of the Selection Committee were probably prepared after the appointment orders were issued on 16.09.2005 and 17.09.2005.* F
- 17) *There were more than 2 months delay in handing over the Selection lists to the then Vice Chancellor. The reasons given by the then Vice Chancellor for the delay in not receiving the selection lists towards the end of June or July* G H

- A 2005 are not convincing.
- 18) *The Reservation policy of the Government was not followed by the University. Reservations of the posts for backward classes (social/ vertical reservation) were not made according to their prescribed percentage as per the relevant GRs. of the State Government.*
- B
- 19) *The graduates of the Yashwantrao Chavan Maharashtra Open University were not considered in the University for appointment and promotion in the post of JRA.*
- C
- 20) *There were illegalities, flaws and consequential reshuffling of the Selection Lists and other infirmities in preparation of the existing selection lists of these posts of SRA and JRA. Thus, the appointments made in the posts of SRA and JRA are highly irregular.*
- D
- 21) *The routine procedures for making appointment in the university was not followed in the appointments made to the posts of SRA and JRA. In the report it is concluded that the entire selection process and selection of the candidates to the posts of SRA and JRA is vitiated by the illegalities, irregularities and improprieties and therefore the appointments made pursuant thereto, need to be set aside.*
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- F

9. On receipt of the report from Justice Dhabe Committee the Chancellor directed the Vice Chancellor of the University to place the matter before the Executive Council for its opinion. The matter was accordingly placed before the Executive Council of the University on 14th February 2011. The Council while accepting the findings recorded by the Dhabe Committee recommended that a lenient view be taken by the Chancellor

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and the appointments already made protected having regard to the fact that those appointed had already served the University for over six years during the interregnum. The petitioners also appear to have made a representation to the Chancellor in which they once again asserted that their appointments had been properly made on the basis of their merit and that the termination of their services after more than six years will be grossly unfair. The Chancellor, however, felt that Justice Dhabe Committee had reported illegalities and irregularities in the procedure adopted by the Selection Committee which findings having been accepted by the Executive Council left no room for any leniency in the case, considering the gravity and seriousness of the matter. The Chancellor found that the entire process of selection of candidates and their appointments stood vitiated because of such irregularities. Directions were accordingly issued to the Vice Chancellor to initiate action to cancel the appointments of the candidates concerned after following the procedure prescribed by law and to fix the responsibility of those who had committed lapses in the matter of selection of the candidates and take disciplinary action against them including the Chairman of the Selection Committee and the then Registrar and Member Secretary of the said Committee. The Chancellor further directed the Vice Chancellor to consider the suggestions made by Justice Dhabe Committee in order to avoid recurrence of such illegalities and irregularities in future recruitments.

10. In obedience to the directions issued by the Chancellor, disciplinary action appears to have been initiated against those comprising the Selection Committee in which the officials are accused of having made illegal selection of 131 candidates including the petitioners thereby not only causing financial loss to the University but also bringing disrepute to it. We are in the present appeals not concerned with the fate of the said proceedings which appear to be lingering on even at present. As regards the petitioners, they were served notices calling

A upon them to appear before the Vice Chancellor for a personal hearing against their selection and appointment as SRAs/JRAs in the University. It is not in dispute that the petitioners in reply to the said notices filed their respective responses before the Vice Chancellor and were heard on different dates mentioned

B in the communications received by them. It is also not in dispute that the petitioners submitted their representations before the Vice Chancellor in writing in which they stated that their appointments were regular and legally sound apart from relying upon the fact that they had served the University for nearly six

C years thereby entitling them to protection against ouster on equitable grounds. The Vice Chancellor then reported the result of the hearing provided by him to the petitioners by his letter dated 1st November 2011. Consideration of the report received from the Vice Chancellor, the opinion offered by the Executive

D Council of the University and the entire material including the report submitted by Justice Dhabe Committee led the Chancellor to pass an order on 16th December 2011 in which the Chancellor held that the entire process of selection and appointment having lost its sanctity on account of irregularities in the same could not be approved or rectified. The Chancellor

E felt that a lenient view on humanitarian grounds alone would be against the principles of governance and fair selection process in the matter of recruitment. He accordingly turned down the recommendation of the Vice Chancellor that out of 83 SRAs and JRAs, selection of 65 candidates could be saved as valid

F while remaining 18 could be ousted. He directed that Justice Dhabe Committee Report did not leave any room for the Vice Chancellor to strike a discordant note or sit in judgment over the conclusions drawn by the Committee. The Chancellor accordingly cancelled the appointments of 83 candidates of

G SRAs and JRAs who had been selected and taken into the service of the University on the basis of a process which the Chancellor found was vitiated and void ab initio.

11. In compliance with the directions issued by the

H Chancellor the Vice Chancellor issued individual orders in each

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case terminating the services of the appointees concerned. Aggrieved by the said orders the petitioners filed Writ Petition Nos. 238/12, 389/12, 247/12 and 251/12 before the High Court of Judicature at Bombay, Nagpur Bench which petitions have now been dismissed by the said Court in terms of the common order impugned in these appeals.

12. We have heard learned counsel for the parties at length. The following questions arise for our consideration:

- 1) Was the Chancellor competent to appoint a Single Member Committee headed by Justice H.W. Dhabe to examine the illegalities, irregularities, fairness and impropriety of the selection process and consequent appointments to the cadre of SRAs and JRAs?
- 2) Were the inquiry proceedings entrusted to Justice Dhabe Committee conducted in accordance with the principles of natural justice?
- 3) Were the findings recorded by Justice Dhabe Committee in any manner illegal or perverse to warrant interference with the same by a Writ Court?
- 4) Was the procedure adopted by the University and the Vice Chancellor fair and reasonable and in consonance with the principles of natural justice?
- 5) Was the Chancellor of the respondent-University and the High Court justified in declining the prayer of the petitioners for continuance in service on account of the time lag between the date of their appointments and the date on which their services were terminated?

We shall deal with the question ad seriatim.

A Reg. Question No. 1

13. Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 was enacted to consolidate and amend the law relating to the agricultural universities in the State of Maharashtra. The legislation provides for better governance, more efficient administration and financial control of the Universities and for better organisation of teaching, research and extension education therein apart from providing better facilities in agricultural and allied matters in particular for the development of agricultural sciences which is one of the prime objects underlying the Act. Chapter II of the Act comprises Sections 3 to 11. Section 4 of the Act states that each University shall be deemed to be established and incorporated for the purposes enumerated therein. The purposes mentioned in the said provision includes education in agriculture in allied sciences and in humanities besides furthering the advancement of learning and research in agriculture, undertaking and guiding extension education programmes; integrating and coordinating the teaching of subjects in the different faculties, coordinating agricultural education, research and extension education activities, teaching and examining students and conferring degrees and diplomas. Section 6 of the Act deals with the powers and functions of the Universities. It inter alia provides that each University shall have the powers and functions enumerated under the said provision, in particular the power to institute teaching, research and extension education posts required by the University and to appoint persons to such posts. Sub-section (x) to Section 6 is in this regard relevant which reads:

G *"to institute teaching, research and extension education posts required by the University and to appoint persons to such posts."*

14. Section 11 of the Act empowers the Chancellor to cause an inspection and inquiry on matters stipulated therein.

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We may gainfully extract the said provision in extenso as the power of the Chancellor to direct an inquiry into the validity of the selection and appointments has been questioned before us in these appeals. Section 11 reads as under: A

"SECTION 11: Chancellor to cause inspection and inquiry on various matters: B

- (1) *The Chancellor shall have the right to cause an inspection to be made, by such person or persons or body of persons, as he may direct, of any University,, its buildings, farms, laboratories, libraries, museums, workshops and equipments of any college, institution or hostel maintained, administered or recognised by the University and of the teaching and other work conducted by or on behalf of the University or under its auspices of and of the conduct of examinations or other functions of the University, and to cause to inquiry to be made in like manner regarding any matter connected with the administration or finances of the University. C D E*
- (2) *The Chancellor shall, in every case, give due notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative, who all have the right to be present and to be heard at the inspection or inquiry. F*
- (3) *After an inspection or inquiry has been caused to be made, the Chancellor may address the Vice-Chancellor on the result of such inspection or inquiry and the Vice-Chancellor shall; communicate to the Executive Council the views of the Chancellor and call upon the Executive Council to communicate to the Chancellor through him its opinion thereon within such time G H*

- A *as may have been specified by the Chancellor. If*
the Executive Council communicates, its opinion
within the specified time limit, after taking into
consideration that opinion, or where the Executive
Council fails to communicate its opinion in time,
B *after the specified time limit is over, the Chancellor*
may proceed and advise the Executive Council
upon the action to be taken by it, and fix a time
limit for taking such action
- C (4) *The Executive Council shall, within the time limit*
so fixed, report to the Chancellor through the Vice-
Chancellor the action which has been taken or is
proposed to be taken on the advice tendered by
him.
- D (5) *The Chancellor may, where action has not been*
taken by the Executive Council to his satisfaction
with in the time limit fixed, and after considering
any explanation furnished or representation made
by the Executive Council, issue such direction, as
E *the Chancellor may think fit, and the Executive*
Council and other authority concerned shall
comply with such directions.
- F (6) *Notwithstanding anything contained in the*
preceding sub-section if at any time the
Chancellor is of the opinion that in any matter the
affairs of the University are not managed in
furtherance of the objects of the University or in
accordance with the provisions of this Act and the
statutes and Regulation or that special measures
G *are desirable to maintain the standards of*
University teaching, examinations, research,
extension education, administration or finances,
the Chancellor may indicate to the Executive
Council through the Vice-Chancellor any matter
H *in regard to which he desires an explanation and*

call upon the Executive Council to offer such explanation within such time as may be specified by him. If the Executive Council fails to offer any explanation within the time specified or offers an explanation which, in the opinion of the Chancellor is not satisfactory, the Chancellor may issue such directions as appear to him to be necessary, and the Executive Council and other authority concerned shall comply with such directions.

(7) *The Executive Council shall furnish such information relating to the administration and finances of the University as the Chancellor may from time to time require.*

(8) *The Executive Council shall furnish to the State Government such returns or other information with respect to the property or activities of the University as the State government may from time to time require".*

(emphasis supplied)

15. A careful reading of the above would leave no manner of doubt that the Chancellor is vested with the power to cause an inspection to be made by such person or persons as he may direct of any University, its building, farms, laboratories, libraries etc. or of hostels administered and recognised by the University or of the teaching or other workshops conducted on behalf of the University or any conduct of examinations or other functions of the University. The inspection so directed is, however, distinct from the inquiry which the Chancellor may direct regarding any matter connected with the administration or finance of the University. The expression 'administration or finance' of the University are in our opinion, wide enough to include an inquiry into any matter that falls under Section 6(x) (supra). If creation of teaching, research and education posts required by the University is one of the functions of the University and if

A appointment of suitable persons against such posts is also one
of such functions, there is no reason why the power of the
Chancellor to direct an inquiry under Section 11(1) should not
extend to any process leading to such appointments. The term
'administration of the University' appearing in sub-Section 1 of
B Section 11 would, in our opinion, include every such activity as
is relatable to the functions of the University, under Section 6.
Selection of persons suitable for appointment and
appointments of such persons would logically fall within the
expression "administration of the University" within the meaning
C of Section 11(1) of the Act. We have, therefore, no hesitation
in holding that the inquiry directed by the Chancellor into the
illegalities and irregularities of the selection process culminating
in the appointment of Senior and Junior Research Assistants
was legally permissible. The power vested in the Chancellor
D under Section 11 to direct an inspection or an inquiry into
matters referred to in the said provision is very broad and vests
the Chancellor with the authority to direct an inspection or an
inquiry whenever warranted in the facts and circumstances in
a given case. We may also refer to Section 15 of the Act
whereunder the Governor of Maharashtra is ex-officio Head of
E each of the Universities who shall, when present, preside at any
convocation of the University. Section 15 reads:

*"(1) The Governor of Maharashtra, shall be the
Chancellor of each of the Universities.*

F *(2) The Chancellor shall, by virtue of his office, be the
head of the University and shall, when present, preside
at any convocation of the University.*

G *(3) The Chancellor may call for his information any
papers relating to the administration of the affairs of the
University and such requisition shall be complied with by
the University.*

H *(4) Every proposal to confer any honorary degree shall
be subject to confirmation by the Chancellor.*

(5) The Chancellor may, by order in writing, annul any proceeding of any officer or authority of the University, which is not in conformity with this Act, the Statutes or the Regulations, or which is prejudicial to the interest of the University;

Provided that, before making any such order, he shall call upon the officer or authority to show cause why such an order should not be made, and if any cause is shown within the time specified by him in this behalf, he shall consider the same.

(6) The Chancellor shall exercise such other powers and perform such other duties as are laid down by this Act."

(emphasis supplied)

16. A plain reading of the above shows that apart from being the ex officio Head of the University, the statute specifically confers upon the Chancellor the power to call for his information any paper relating to the administration of the affairs of the University and upon such request the University is bound to comply with the same. Sub-section 5 vests the chancellor with the power to annul any proceeding of any officer or authority if the same is not in conformity with the provisions of the Act, the statutes or the Regulations or which is prejudicial to the interest of the University. A conjoint reading of Sections 11 and 15, in our opinion, leaves no manner of doubt that the Chancellor exercises ample powers in regard to the affairs of the University and in particular in regard to the affairs of the administration of the University. The power to direct an inquiry into any matter concerning the administration of the University is only one of the facets of power vested in the Chancellor. The exercise of any such power is not subject to any limitation or impediment understandably because the power is vested in a high constitutional functionary who is expected to exercise the same only when such exercise becomes necessary to correct aberrations and streamline administration so as to maintain the

- A purity of the procedures and process undertaken by the University in all spheres dealt with by it. The power to direct an inquiry is meant to kickstart corrective and remedial measures and steps needed to improve the functioning of the University as much as to correct any illegal or improper activity in the
- B smooth running of the administration of the University. As a father figure holding a high constitutional office, the Chancellor is to be the guiding spirit for the Universities to follow a path of rectitude in every matter whether it concerns the administration or the finances of the University or touches the teaching and
- C other activities that are undertaken by it. The legislature, it is obvious, has considered the conferment of such powers to be essential to prevent indiscipline, root out corruption, prevent chaos or deadlock in the administration of the University or any office or establishment under it that may tend to shake its
- D credibility among those who deal with the institution.

17. The Chancellor had, in the case at hand, directed an inquiry into the illegalities and irregularities in the selection and appointment process in the light of widespread resentment against the same as is evident from the fact that three writ
- E petitions had been filed in the High Court challenging the selection and the appointment process. Two of the writ petitions had been disposed of as noticed earlier no sooner Justice Dhabe Committee was constituted by the Chancellor for holding a detailed inquiry into the allegations. The petitioners were not
 - F only aware of the fact about the pending writ proceedings but also about the constitution of Justice Dhabe Committee. As a matter of fact with the disposal of Writ Petitions No.4771 of 2006 and 905 of 2006 the petitioner had known that Justice Dhabe Committee will eventually determine whether or not their
 - G selection and appointment was proper. Justice Dhabe Committee had even issued notices to the petitioners who had in turn responded to the same. The constitution of Justice Dhabe Committee was, despite all this, never questioned by the petitioners. On the contrary the petitioners merrily
 - H participated in the proceedings and took a chance to obtain a

favourable verdict from it. Having failed to do so, they turned around to challenge not only the findings recorded by the Committee but even the authority of the Chancellor to set up such a Committee. While the findings recorded by the Inquiry Committee could be assailed, the challenge to the setting up of the Committee was clearly untenable not only because there was no merit in that contention but also because having taken a chance to obtain a favourable verdict the petitioners could not turn around to assail the constitution of the Committee itself. Question 1 is accordingly answered in the negative.

Reg. Question No. 2

18. The petitioners had unsuccessfully challenged Justice Dhabe Committee Report before the High Court on the ground that principles of natural justice had not been complied with by the Committee. The High Court has noted and in our opinion rightly so that Justice Dhabe Committee had issued notices to each one of the petitioners asking for their explanation which the petitioners had submitted. The High Court noted that the inquiry proceedings before Justice Dhabe had continued for nearly three years during which period the petitioners had made no grievance either before the Committee or before any other forum regarding non-compliance with the principles of natural justice. There is nothing on record to suggest that any point relevant to the controversy was not considered by Justice Dhabe Committee or that there was any impediment in their offering an effective defence before the Committee. The petitioners had on the contrary candidly admitted in the writ petition itself that upon receipt of notices from the Committee they had appeared and filed their respective affidavits before the Committee. Some of the petitioners had even furnished some additional information which was summoned from them. The Committee had, it is evident, associated the petitioners with the proceedings by inviting them to appear and participate in the same, heard the petitioners and considered their version. There is neither an allegation nor any material to suggest that

- A there was any reluctance or refusal on the part of the Committee to entertain any material which the petitioner intended to place in their defence or to summon any record from any other quarter relevant to the questions being examined by the Committee. The argument that the petitioners did not know as to what the
- B complaint against them was has been rejected by the High Court and quite rightly so. Once the petitioners were informed about the setting up of the Committee and invited to participate in the same and once they had appeared before the Committee and filed their affidavits it is difficult to appreciate the argument
- C that the petitioners did so without knowing as to why was the Committee set up and what was the inquiry all about. Assuming that any of the petitioners did not fully comprehend the nature of allegations being inquired into by the Committee or the purpose of the inquiry nothing prevented the petitioners from taking suitable steps at the appropriate stage assuming that
- D they were so naïve as to simply appear before the Committee without being aware of the purpose for which they were invited. They could indeed approach the Committee to secure the relevant information to fully acquaint themselves about the on-going process and the nature of the defences that was open to them. Having remained content with their participation in the inquiry proceedings for nearly three years and having made no grievance at all against the procedure adopted by the Committee in dealing with the subject till the writ petitions challenging the termination orders were filed, we see no merit
- E in the specious contention that principles of natural justice were violated by the Committee especially when no prejudice is demonstrably caused to the petitioners on account of the procedure which the Committee followed in concluding the enquiry proceedings. Question No.2 is also in that view
- F answered in the negative.
- G

Reg. Question No. 3

- H 19. Findings recorded by Justice Dhabe Committee were based on facts discovered in the course of the inquiry. No

serious attempt was made before the High Court nor even before us to challenge the said findings of fact. Even otherwise a finding inquiry instituted by the Chancellor was bound to involve appraisal of evidence, documentary and oral. The conclusions drawn on the basis of such appraisal were open to critical evaluation by the authorities before whom the conclusions and the Report was submitted for action but once such conclusions are upon a careful re-appraisal found to be justified, a writ Court will be very slow in interfering with the same.

20. In the present case, upon receipt of the report from Justice Dhabe Committee the matter was directed to be placed before the Executive Council of the University. That direction was meant to give the Executive Council an opportunity to examine the findings of fact and the conclusions drawn from the same critically and to determine whether the same were justified. The Executive Council, it is common ground, had without any reservation approved the findings recorded by Dhabe Committee, no matter with a recommendation to the Chancellor to take a lenient view in the matter, having regard to the fact that the petitioners had already served the University for nearly six years. The recommendation of the Executive Council did not, however, find anything amiss with the conclusions drawn by the Dhabe Committee as to the irregularities in the selection process culminating in illegal appointments of the selected candidates. The 'fact finding' aspect thus stood concluded with the approval of the Executive Council of the University. The Vice Chancellor no doubt made an attempt at segregating what according to him was the valid part of the selection from that which was not, but the Chancellor did not approve of that exercise. The Chancellor took the view that the entire selection stood vitiated by widespread irregularities, leaving hardly any room for a distinction between the so called valid and invalid parts of the selection process. Be that as it may the fact remains that we have not been able to find any reason to interfere with the findings recorded by the

A Justice Dhabe Committee. The sanctity of the entire selection process having been vitiated by irregularities and acts of nepotism, question No. 3 shall have to be answered in the negative, which we accordingly do.

B Reg. Question No. 4

C 21. It is also not in dispute that in compliance with the orders passed by the Chancellor, the Vice Chancellor of the University had issued notices to the petitioners calling upon them to appear before him for a personal hearing in support of their selection and appointment as SRAs/JRAs. It is also not in dispute that upon receipt of the said notices the petitioners had filed their responses in the required format and were also given an opportunity of being heard by the Vice Chancellor. In the course of the hearing the petitioners obviously relied upon D the written responses and sought a direction against ouster from service. There is, therefore, no merit in the submission that upon submission of the recommendations by Justice Dhabe Committee the petitioners did not have any opportunity to present their version before the Vice Chancellor nor is it E possible to dub the hearing provided by the Vice Chancellor as a farce. The High Court has, in our opinion, rightly rejected a similar contention urged before it and correctly concluded that the petitioners had failed to establish that the Vice Chancellor had either violated the principles of natural justice or that any F prejudice was caused by the procedure adopted by him in offering them a hearing. As a matter of fact the Vice- Chancellor had in his anxiety to help the petitioners tried to sit in judgment over the findings and conclusions of the inquiry Committee and taken a stance that was overtly sympathetic towards the G petitioners. The uncharitable expression used by the petitioners as to the nature of the process undertaken by the Vice Chancellor is not, therefore, justified. The Vice Chancellor had in our view acted fairly and fully complied with the principle of natural justice. There is no gainsaid that the requirements of audi alteram partem are not capable of a strait jacket H

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application. Their application depends so much upon the nature of the Tribunal that is deciding the matter, the nature of the inquiry that is being made and the consequences flowing from the determination. A notice to the petitioners who were likely to be affected and a hearing afforded to them apart from written responses filed in reply to the notices was in our opinion a substantial compliance with the principles of natural justice. No further hearing was required to be repeated by the Chancellor who had before whom the recommendations of the Executive Committee and the Vice Chancellor who took a final view of the matter having regard to the totality of the circumstances. The High Court has, in this regard, observed:

"Thus, the Chancellor was not required to give any personal hearing to the petitioners while disagreeing with them. If we hold that prior to passing of the final order the Chancellor was required to hear the petitioners once again, that would mean that although the facts are undisputed and although no prejudice is demonstrated, we agree with the submissions of the petitioners. This would mean second round or second opportunity being made available to the petitioners to show cause against the findings and conclusions in the Inquiry Committee's report. That would mean reopening of the matter in its entirety which was not permissible and feasible in the peculiar facts of the case. This could be equated with an opportunity to show cause against the proposed punishment as is available in service jurisprudence. Those principles cannot be imported into the exercise that has been undertaken in the facts and circumstances of this case."

22. We see no error of law in the view taken by the High Court to warrant our interference. Question No. 4 is accordingly answered in the negative.

Reg. Question No. 5

23. The Chancellor declined to show any leniency to the

- A petitioners no matter they had served the University for over six years primarily because the entire selection process was in his opinion vitiated by widespread irregularities in the selection process. The findings recorded by Justice Dhabe Committee upon a detailed and thorough examination of the matter fully supported that view of the Chancellor. The reasons that prevailed with the Chancellor cannot be said to be illusory or irrelevant so as to call for interference from a writ Court. The Chancellor was dealing with a case where the Selection Committee had called a large number of candidates for interview without following the proper procedure as prescribed by the State Government leading to the appointment of undeserving candidates by manipulation and favouritism. It was a case where the posts of SRAs/JRAs although carrying different pay scales were clubbed for holding a common interview. Even the criterion for assessment of the merit of the candidates was found to be faulty. Marks were awarded for qualifications although the thesis for such qualifications was submitted after the date prescribed for such advertisement. Marking system itself was found to be erroneous. Higher weightage was given to the performance in the interview as compared to academic merit. There was tinkering in the mark sheets of the candidates in certain cases and mark sheets were not made available in the meetings of the Selection Committee. The Chairman and the Member Secretary of the Selection Committee had on their own increased the number of posts of SRAs and JRAs to be filled upon. All these among other aspects were considered by Justice Dhabe Committee in its report which concluded that the entire selection process was vitiated. That beneficiaries of such faulty selection process should hold on to the benefit only because of lapse of time would be travesty of justice especially when deserving candidates were left out with a brooding sense of injustice and cynicism against the efficacy of the system that was meant to act fairly and objectively. Continuance in office of those selected by means that are not fair, transparent and reasonable will amount to perpetuating the wrong. The length of service put in
- H

by the candidates who were selected on the basis of such a faulty selection process may be one of the considerations that enters the mind of the Court but there are other weighty considerations that cannot be given a go by or conveniently forgotten lest those who do not adopt such malpractices or those who expect the system to protect their interest and their rights are eternally disappointed and left to believe that a wrong once done will never be corrected just because the legal process by which it is to be corrected is a long and winding process that often takes years to reach fruition.

24. Having said that we must say that the main contention which the petitioners have urged in support of their continuance in service is that they have become overage for any government employment at this stage. If ousted from service the petitioners will have no place to go nor even an opportunity to compete for the vacancies against which they were appointed. That is an aspect which can be and ought to be considered especially when there is no allegation leave alone evidence about any bribery having taken place in the issue of appointment orders by the officials concerned. Even so, continuance of the petitioners in service would not, in our opinion, be justified having regard to the background in which the selection and appointments were made and eventually set aside by the University. All that the long years of service rendered with the University may secure for the petitioners a direction to the effect that in any future selection against the vacancies caused by their ouster and other vacancies that may be available for the next selection the petitioners shall also be considered in relaxation of the upper age limit prescribed for them. Such of the petitioners who could try their luck in the next selection and who succeed in the same will also have the benefit of continuity of service.

25. That brings us to the method of selection that may be followed falling up the vacancies that will be caused by the ouster of the petitioners. An affidavit has in that regard been filed by

A the Shri Dnyaneshwar Ashru Bharati, Registrar of the respondent-University stating that in terms of Maharashtra Act No. XXXII of 2013 the Maharashtra State legislature has amended Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983. Section 58 of the principal Act as substituted by Act XXXII aforementioned provides that no person shall be appointed by the University as a member of the academic staff, except on the recommendation of a Selection Board constituted for the purpose in accordance with the provisions of the Statutes made in that behalf. The posts of SRAs and JRAs are classified as academic as per Statute 71 of the MAU statutes 1990. The process of amendment to the statute 75 and 76 is now underway. The affidavit further states that the University will not be in a position to undertake the selection process of posts advertised on 23rd March 2012 and that selection will be done by Recruitment Board as per the new selection procedure. The affidavit is, however, silent as to the procedure that shall be followed by the Selection Board constituted for the purpose. Be that as it may the establishment of a Selection Board and formulation of proper procedure to be followed by the Board will go a long way in making the process of selection and recruitment objective, fair and reasonable apart from bringing transparency to the norms and the process by which such recruitments were made. We only hope that the process of amendment of relevant statute is expedited by the University and concluded as far as possible within six months from today and process of filling up of posts of SRAs and JRAs currently held by the petitioners and those that were advertised in terms of advertisement dated 23rd March 2012 undertaken in accordance with such procedure.

G 26. In the result, the appeals fail and are hereby dismissed but in the circumstances without any order as to costs. We however direct that the University-respondent shall take necessary steps for constituting the Selection Board in terms of Section 58 of the Act as amended by Maharashtra Act No. XXXII of 2013 and advertise the vacancies currently available,

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together with the posts that are presently held by the appellants
for recruitment in accordance with the procedure that may be
prescribed in accordance with law. The entire process shall be
completed by the University within six months. The appellants
shall also be allowed to apply and participate in the selection
process against the vacancies so advertised in relaxation of
the upper age limit prescribed for such recruitment. For a period
of six months or till the process of selection and appointment
based on the selection process is completed by the
respondent, whichever is earlier, the appellants shall be allowed
to continue in service on the same terms as are currently
applicable to them. In case any one of the appellants is selected
by the new selection process, he shall be granted benefit of
continuity of service. But such of the appellants who do not
compete for the selection or are not selected for the posts that
may be advertised shall stand ousted from service on
completion of the period of six months hereby granted. No
costs.

R.P.

Appeals dismissed.