* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 08th April, 2026.
Pronounced on: 28th April, 2026.
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\+ W.P.(C) 10595/2018

SHRI C. RAMESH .....Petitioner

Through: Mr. Padma Kumar S. and Mr. Gurpreet Singh, Advocates with Petitioner-in-person.

versus

DIRECTOR, VALLABHABAI PATEL CHEST INSTITUTE AND ORS. .....Respondents

Through: Mr. M. K. Singh, Advocate for R-1/V.P. Chest Institute.
Mr. Santosh Kumar and Mr. Devansh Malhotra, Advocates for R-3.
Mr. Syed Abdul Haseeb, CGSC with Mr. Syed Abdur Rahman and Mr. Muhammad Aamir Khan, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. This writ petition assails order dated 2nd May, 2017, whereby the services of the Petitioner with Vallabhbhai Patel Chest Institute[1] have once again been terminated. The impugned order does not arise in isolation; it is the culmination of a long and chequered procedural history. The challenge in the present round rests on a narrow yet substantial ground: the Petitioner contends that the defect which had earlier persuaded this Court to set aside

the initial dismissal was never cured, and that the Respondents have sought to rectify the same *ex post facto* by invoking the Executive Council of the University of Delhi. The Respondents, on the other hand, maintain that the requisite authority always vested in the Governing Body and, in any event, stood affirmed by the Executive Council, thereby sustaining the impugned action.

Factual Background

2.1. The Petitioner joined VPCI as Assistant Registrar (Group A) in terms of offer of appointment dated 09th June, 2001. In terms of this appointment, his service conditions were governed by the University Non-Teaching Employees (Terms & Conditions of Service) Rules, 1971,[2] as amended from time to time, and other rules applicable to the Institute.

2.2. The Governing Body of VPCI, in their meeting on 21st January, 2011, took a decision to initiate major penalty proceedings against the Petitioner, leading to the issuance of charge memorandum dated 28th March, 2011 comprising nine articles of charge. They related, broadly, to delays and irregularities in the accounts branch, non-implementation of administrative directions, use of objectionable language in correspondence, direct representation to the Vice-Chancellor, and remarks made in response to adverse entries.

2.3. The Petitioner submitted his defence, addressing the charges on merits. He also objected to the competence of the Governing Body and of the Director to initiate and continue the proceedings; however, the said objection was not accepted. An Inquiry Officer was thereafter appointed,

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[1] "VPCI"
[2] "1971 Rules"

and the inquiry culminated in findings adverse to the Petitioner. A show cause notice proposing the penalty of dismissal was issued, and on 8th January, 2013, the Governing Body resolved to dismiss the Petitioner from service. The formal order of dismissal dated 18th February, 2013 was passed by the Governing Body of VPCI.

2.4. The Petitioner assailed the aforesaid dismissal in W.P.(C) 2110/2013. By judgment dated 29th January, 2014, this Court set aside the order of dismissal, on one issue alone. The Court held that the Petitioner, being governed by the 1971 Rules, was subject to Rule 69, which mandated that disciplinary proceedings be instituted by the Executive Council or by an authority duly empowered by it through a general or special order. It was noted that no explicit resolution of the Executive Council delegating such power to the Governing Body had been placed on record. The Court also declined to accept the Respondents' contention that the status of the Governing Body as the appointing authority conferred disciplinary authority upon it. It was observed that such a contention might have had relevance in the absence of governing rules, but could not be sustained where the appointment itself was regulated by the 1971 Rules. On this limited ground, the dismissal was set aside. At the same time, liberty was reserved to the Respondents to proceed with the disciplinary proceedings, if otherwise permissible in law, subject to the requisite authority being conferred by the Executive Council through an appropriate general or special resolution. The relevant portion of the said judgment reads as follows:

> *"5. I have heard the learned counsel for the parties. It is not in dispute that the petitioner falls in the category of non teaching staff / administrative staff. He had joined the services of the VPCI on 10.07.2001, as an Assistant Registrar. Major penalty proceedings were initiated against the petitioner on 21.01.2011 by the Governing Body of*

VPCI under Rule 70. The petitioner was charge-sheeted and, thereafter terminated from service. As indicated above, the challenge is based on a singular ground. No other ground is pressed before me, by the counsel for the petitioner.

6. The question which arises for consideration is, whether the power exercised by the Governing Body to terminate the services of the petitioner, who is admittedly, a non-teaching staff / administrative staff, is legally sustainable.

7. On perusal of clauses 2(1) and 2(1)(2)(f) of the said Ordinance, it emerges that the said clauses would provide for the following:-

7.1 Clause 2(1), provides the manner in which the Governing Body has to be constituted for management and administration of VPCI. The Director of VPCI, under clause 2(1)(3), is the ex-officio Member Secretary of the Governing Body. Clause 2(1)(2), confers the power on the Governing Body to manage the affairs of VPCI in respect of the functions detailed out in sub clauses (a) to (h) subject to general control and supervision of the Executive Council.

7.2 Clause 2(1)(2)(f) provides for the following :-

"(f). to appoint, suspend or terminate the services of the administrative and other non-academic staff of the Institute in respect of whom such powers may have been delegated by the Executive Council and to determine the emoluments and conditions of service.."
(emphasis is mine)

7.3 A bare perusal of the said clause would show that in so far as the administrative and non academic staff is concerned, the Executive Council is empowered to delegate the power to appoint, suspend or terminate their services.

7.4 The additional affidavit filed by respondent no.2 clearly indicates that no such 'explicit / specific' resolution was passed by the Executive Council delegating such power to the Governing Body of VPCI. The learned counsels for the respondents have submitted before me that in the absence of a specific resolution, normal principle should apply, which is that, the appointing authority, should have the power to terminate the services of an employee.

7.5 As indicated above, their argument is that having not questioned the power of appointment of the Governing Body, surely, the petitioner cannot now be heard on the question of power of termination. Perhaps, this argument may have been accepted by me, in the absence of rules, to which, the petitioner has been made subject to, at the stage of appointment

itself. A perusal of the appointment letter dated 09.06.2001 would show that one of the terms and conditions of his appointment was that, he will be governed by the aforementioned rules as amended from time to time and other rules, as applicable to the institute. Clearly, Rule 69 provides that only the Executive Council or any other authority empowered by it by general or special order may institute disciplinary proceedings against the employee. The relevant provisions of the said rule are extracted hereinafter :-

"...69. Authority to institute proceedings :-

1. The Executive Council or any other authority empowered by it by general or special order may :-
(a). institute disciplinary proceedings against any employee;
(b). direct a disciplinary authority to institute disciplinary proceedings against an employee on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 67."
(emphasis is mine)

7.6 Therefore, it is quite clear that the appointment was governed by Rule 69. The learned counsel for the respondents have argued that the expression "as applicable to institute" would mean that it would have to go back to Ordinance XX clause 2(1)(2)(f). I have read that clause. It does not improve the case of the respondents.

7.7 In the middle of the dictation, counsels for the respondents again got up to argue the matter and attempted to draw my attention to page 231 of the paper book. Mr. Rupal at this stage referred me to page 202 of the paper book, which is an extract of the minutes of the meeting held by the Governing Body on 27.05.2000. Mr. Rupal says that in that meeting, the Chairman of the Governing Body put a proposal that the appointing authority, the disciplinary authority and the appellate authority for the non teaching staff, under the aforementioned rules, should be the Governing Body. This proposal based on the said extract, I am told, was approved. According to me, this argument begs the question : quite clearly, the Governing Body on its own cannot hold a meeting and, thereby, confer a power upon itself, which the Executive Council, has not conferred on it.

8. In view of the above, the writ petition has to be allowed on this short ground. The order of termination has to be set aside. It is ordered accordingly. The respondents, however, shall be empowered to continue the disciplinary proceedings, if so permissible in law, subject to necessary powers being conferred upon it by either a specific or general resolution of the Executive Council. There shall, however, be no orders as to costs.

9. With the aforesaid observations in place, the writ petition and the pending applications are disposed of.

10. Dasti."

2.5. The Respondents sought review [Review Petition 106/2014], which was dismissed on 20th January, 2015. The order records the submission made on behalf of the Review Petitioner, based on the affidavit filed by Delhi University, that there was *"no resolution by Executive Council of University of Delhi, in place, delegating power of dismissal in its favour"*.

2.6. The Respondents carried the matter in appeal [LPA No. 106/2015]. The Division Bench took note of Annexure R-2, stated to indicate that the Executive Council had delegated the requisite powers to the Governing Body. However, observing that the said document had not been placed before the Single Judge, the Division Bench declined to interfere with the judgment setting aside the dismissal. It observed that, since disciplinary power was vested in the Executive Council of the University of Delhi, the issue of disciplinary action against the Petitioner could be placed before the Executive Council for its decision. The Bench described this as an alternative to the curative route charted in Paragraph No. 8 of the judgment dated 29th January, 2014. The appeal was disposed of in those terms on 25th February, 2015, to the following effect:

"1. Challenge in the appeal is to the order dated January 29, 2014 allowing W.P.(C) 2110/2013, filed by the first respondent, which was laying a challenge to a memorandum issued by the Governing Body of the appellant terminating his service.

2. The case of the first respondent was that his service was regulated by the University Non-teaching Employees (Terms and Conditions of Service) Rules, 1971 as per which the Disciplinary Authority was the Executive Council of the University of Delhi.

3. In the counter affidavit filed by the appellant it was pleaded that

the disciplinary power had been delegated to the Governing Body of the institute, and for which reliance was placed upon clause 2(f) of Ordinance XX of the University of Delhi.

4. The learned Single Judge noted the relevant clause of the Ordinance and found that the power to terminate could be exercised by the Governing Body of the institute only if it was delegated to it by the Executive Council. The learned Single Judge noted that under Rule 69 of the University Non-teaching Employees (Terms and Conditions of Service) Rules, 1971, the power to take a disciplinary action was with the Executive Council of the University.

5. To put it pithily, the learned Single Judge found that under Clause 2(f) of Ordinance XX of the University of Delhi was an enabling provision to delegate its power by the Executive Council to the Governing Body of the institute. The learned Single Judge found that there was no document shown by the institute showing delegation having been made.

6. The order of termination was accordingly set aside for the reason the authority which took the decision was held not to be empowered to do so. In paragraph 8 of the decision dated January 29, 2014, the learned Single Judge held that it would be open for the respondents to take action as per law. The learned Single Judge clarified that if the Executive Council of the University of Delhi delegated the power to the Governing Body of the institute it could proceed, empowered by law, to take disciplinary action.

7. Seeking review of the decision dated January 29, 2014, a prolix review petition was filed in which it was conceded that in the pleadings in the counter affidavit, the institute failed to show that the Executive Council had, as a matter of fact, delegated the power to the Governing Body of the institute to take disciplinary action against the first respondent.

8. So stating, pleadings were made regarding constitution of the ad-hoc Governing Body. Pleadings were made to various resolutions. Somewhere mid-way of the prolix pleadings a reference was made to Annexure R-2 to bring home a point that the Executive Council had delegated the necessary power to the Governing Body.

9. But regretfully, in the review petition it has not been pleaded as to why documents now being relied upon as Annexure R-2 could not be brought to the notice of the learned Single Judge when the counter affidavit was filed. Regretfully further, there are no pleadings as to in what manner the statutory rules relied upon by the respondent required the matter to be reconsidered vis-a-vis the Executive Council Resolution annexed as Annexure R-2 filed along with the review petition. The learned Single Judge dismissed the review petition on January 20, 2015 noting that learned senior counsel who appeared for the review petitioner accepts that there is, in fact, no resolution by the Executive Council of the University of Delhi in place delegating disciplinary power upon the Governing Body of the appellant institute.

10. The learned Single Judge therefore held that there was no error

apparent in the face of his judgment dated January 29, 2014.

11. Suffice it to state that the order under review notices that the counsel for the appellant failed to bring home the point before the learned Single Judge, and accepted as a matter of fact, that there was no resolution by the Executive Council in place delegating disciplinary power on the Governing Body of the appellant.

12. The reason is obvious, the prolix pleadings in the review petition.

13. Be that as it may, learned counsel for the appellant states that the appeal may be disposed of clarifying with respect to paragraph 8 of the decision dated January 29, 2014. The clarification being in consonance with the reasoning of the decision dated January 29, 2014 passed by the learned Single Judge; since the disciplinary power is vested in the Executive Council of the University of Delhi, it may be observed that the issue of disciplinary action against the respondent could be placed before the Executive Council of the University of Delhi for its decision. The reason being, the view taken by the learned Single Judge that the power as per the rule to take disciplinary action is with the Executive Council; which power was capable of being delegated but no delegation was shown.

14. We accordingly dispose of the appeal observing that in alternative to the curative route which could be chartered as per para 8 of the impugned decision, the matter of disciplinary action could be considered by the Executive Council of the University of Delhi.

15. No costs.

16. Dasti."

2.7. The SLP [No. 2329/2016] filed against the aforesaid order was dismissed by the Supreme Court. The Petitioner then initiated contempt proceedings, contending that, despite the judgment dated 29th January, 2014, he had not been reinstated in service. By order dated 6th April, 2015, the Contempt Court recorded that the Executive Council had not yet taken any decision in the matter, and accordingly directed the University to convene a meeting of the Executive Council within six weeks and to communicate its decision to the Petitioner within a further period of two weeks thereafter.

2.8. The University thereafter passed Executive Council Resolution No. 19(3) dated 28th May, 2015. That resolution stated that, pursuant to the order dated 25th February, 2015 in W.P.(C) 2110/2013 and LPA No. 106/2015, the

powers to initiate disciplinary action against employees are delegated to the Governing Body of VPCI in terms of the Non-Teaching Employees (Terms and Conditions of Service) Rules, 2013. The same resolution also noted that such powers were already vested with the Governing Bodies of constituent and affiliated colleges, including VPCI, in terms of the 2013 Rules.

2.9. The matter did not conclude there. By order dated 5th November, 2015, the Contempt Court directed reinstatement of the Petitioner. This, in turn, led to a further challenge in LPA No. 155/2016, which was dismissed by the Division Bench on 22nd August, 2016. The Bench clarified that the judgment of the Single Judge dated 29th January, 2014, to the extent it set aside the first termination, remained undisturbed by the Division Bench order dated 25th February, 2015. It further observed that, although the Executive Council's resolution dated 28th May, 2015 may have enabled VPCI to proceed with disciplinary action from that date, there was no material on record to demonstrate that such authority vested in the Governing Body as on the date of the original termination, i.e., 18th February, 2013. In that view, the Division Bench upheld the direction to reinstate the Petitioner. The review petition [No. 450/2016] against this judgment was also dismissed on 4th October, 2016.

2.10. The Petitioner was eventually reinstated on 5th December, 2016; however, he was placed under suspension. The Respondents thereafter approached the University, seeking approval of the Executive Council for the disciplinary action taken by the Governing Body. The correspondence dated 5th December, 2016 reveals that the Respondents sought an explicit and specific approval of the Executive Council to the decision taken by the Governing Body, stating that such approval was necessitated in view of the

observations of the Division Bench in LPA No. 106/2015.

2.11. The Executive Council then passed Resolution No. 32 in the meeting held on 28th February, 2017 and resumed on 7th March, 2017.[3] The resolution, *inter alia*, states:

> *"The Executive Council, for removal of any doubt whatsoever, affirms that the competent appointing and disciplinary authority of the non-teaching employees of the Vallabhbhai Patel Chest Institute (VPCI) since 21.01.1955 is its Governing Body, vide EC Resolution No. 13(266) dated 21.01.1955. Further, in view of the orders passed by the Hon'ble High Court in LPA No. 106/2015 dated 25.02.2015, the Executive Council endorses the decision taken by the Governing Body of VPCI, dated 08.01.2013 being the appointing and disciplinary authority, to terminate the services of Sh. C. Ramesh."*

2.12. On the strength of that resolution, the impugned order dated 2nd May, 2017 was issued. That order states, in substance, that the Executive Council, by the aforesaid resolution, has endorsed the disciplinary action taken by the Governing Body on 8th January, 2013; that the Petitioner's services accordingly stand terminated with immediate effect; that the earlier proposal regarding 25% back wages stands withdrawn; that the period from 18th February, 2013 to 4th December, 2016 shall be treated as deemed suspension; and that 75% of pay and allowances of the last pay drawn would be paid for that period by way of subsistence allowance.

2.13. Aggrieved, the Petitioner has approached this Court, assailing his termination. He further seeks a direction for reinstatement with effect from 2nd May, 2017 along with back wages and consequential benefits from 19th February, 2013.

Petitioner's Case

3.1. The Petitioner submits that, from the inception, he has consistently

[3] "2017 Resolution"

objected to the authority of the Governing Body to act as the disciplinary authority. He contends that his appointment and service conditions were governed by the 1971 Rules, under which the Executive Council was the competent authority to initiate and conclude proceedings for imposition of a major penalty. It is contended that no valid delegation, whether by general or special order, was ever made in favour of the Governing Body, which fact was affirmed by the judgment of the Single Judge dated 29th January, 2014, and has remained undisturbed through review, appellate, and subsequent proceedings, including the challenge carried to the Supreme Court.

3.2. It is further contended that the order of the Division Bench dated 25th February, 2015 did not interfere with the setting aside of the initial dismissal by the Single Judge. The Division Bench merely observed that the issue of disciplinary action could be placed before the Executive Council for its consideration. This position was clarified in subsequent judgment dated 22nd August, 2016 in LPA No. 155/2016, wherein the Division Bench held that the resolution of 2015 could, at the highest, enable continuation of disciplinary proceedings thereafter, but could not cure the original termination dated 18th February, 2013.

3.3. The Petitioner further submits that the Respondents have not proceeded by issuing any fresh charge memorandum through the competent authority. Instead, they have sought to validate the earlier action. The impugned order dated 2nd May, 2017 does not constitute a fresh disciplinary determination; rather, it affirms the Governing Body's earlier decision dated 8th January, 2013 and, by that, attempts to revive the effect of the original dismissal. Such a course, it is contended, is impermissible.

3.4. Considerable reliance is placed on the Circular dated 2nd February,

1981, which clarifies that the 1971 Rules had attained finality. It is urged that, once the applicability of the 1971 Rules stood clarified, the Respondents could not revert to the arrangements of 1955 and 1959 as though the 1971 regime did not govern the field. The Petitioner further submits that, although the said circular formed part of the official record, it was not placed before the Court in the earlier round of litigation and came to light only subsequently.

3.5. It is also contended that the Executive Council Resolution No. 13(266) dated 21st January, 1955[4] does not advance the Respondents' case in the manner suggested. While the said resolution constituted the Governing Body and conferred certain administrative powers, including the authority to appoint administrative, clerical and other staff, it did not designate the Governing Body as the disciplinary authority under the subsequently framed 1971 Rules. Nor can such authority be conferred retrospectively by way of an *ex post facto* resolution in 2017. Therefore, what the Executive Council purported to do in 2017 was not to clarify a pre-existing and consistent legal position, but to cure a defect that had already been identified and declared by this Court.

3.6. In support of his contentions, the Petitioner relies on the judgements of the Supreme Court in ***Union of India v. B.V. Gopinath***[5] and ***Marathwada University v. Seshrao Balwant Rao Chavan***,[6] and of this Court in ***Union of India v. S.K. Jasra***.[7] The submission is that where the rule or statutory framework requires a particular authority to act, later approval or ratification

[4] "1955 Resolution"
[5] (2014) 1 SCC 351.
[6] (1989) 3 SCC 132.
[7] W.P.(C) 2742/2024, decided on 10th October, 2025.

cannot validate a foundational act that was without authority. He also relies on those authorities to submit that where the initial action is *non-est*, principles of estoppel, finality or technical bar cannot breathe life into the same.

Respondent Nos. 1 and 2's Case

4.1. Respondent Nos. 1 and 2 contend that the Petitioner was appointed by the Governing Body itself and that, at all material times, the Governing Body possessed the requisite disciplinary authority. According to them, the present controversy has arisen only because the 1955 Resolution was not properly placed before the Single Judge in the earlier round of litigation. This resolution constituted the Governing Body and vested in it the powers of both appointing and disciplinary authority in respect of administrative and non-academic staff. Reliance is also placed on the subsequent developments, including the 1959 Rules and Bye-laws, the approval communicated by the Ministry, the Executive Council resolution dated 19th February, 1966, and the later amendment to Ordinance XX. According to the Respondents, this entire sequence evidences a consistent and continuing conferment of disciplinary powers upon the Governing Body.

4.2. The Respondents also rely upon the order of the Division Bench in LPA No. 106/2015, submitting that the Bench had taken note of the 1955 Resolution (referred to as Annexure R-2) and had accepted that the Executive Council had, through that resolution, delegated the requisite powers to the Governing Body. It is urged that the curative course indicated by the Division Bench must be understood in that backdrop, particularly in light of the fact that the said material had not been properly presented in the earlier proceedings.

4.3. It is further submitted that the 2017 Resolution did not create any power retrospectively, but merely clarified and reaffirmed what was always the true legal position. The said resolution removed any doubt and endorsed the action of the Governing Body.

4.4. It is also contended that the power to appoint ordinarily carries with it the power to remove; therefore, a proper construction of the 1955 Resolution, read with the subsequent materials, establishes that the Governing Body possessed the disciplinary authority, and the 2017 Resolution only places the matter beyond controversy.

4.5. On merits, the Respondents submit that all nine charges against the Petitioner stood duly established in the course of the inquiry; that the Petitioner was afforded full and fair opportunity of defence; and that the earlier interference with the order dated 8th January, 2013 was confined to a technical issue of competence. Reliance is placed on the judgements of the Supreme Court in ***National Institute of Technology v. Pannalal Choudhury***[8] and ***High Court of Judicature for Rajasthan v. P.P. Singh***[9] to contend that a competent authority can validate or ratify an action taken at an earlier stage, and that not every procedural irregularity renders the entire proceeding void in administrative law.

Respondent No. 3's Case

5. Respondent No. 3, the University of Delhi, broadly supports the stand taken by Respondent Nos. 1 and 2. It asserts that it has consistently maintained the position that the powers to appoint, suspend, and terminate non-teaching staff of VPCI vest in the Governing Body. In support, reliance

[8] (2015) 11 SCC 669.
[9] (2003) 4 SCC 239.

is placed on the 1955 Resolution, 1959 Bye-laws, and the subsequent amendment to Ordinance XX.

6. In response, the Petitioner contends that this position is difficult to reconcile with the University's own earlier inquiry report dated 25th May, 2014, wherein the powers of the Governing Body were described as *"assumed, derived and deemed*". Reliance is also placed on the submission recorded in the review order dated 20th January, 2015, to the effect that no resolution of the Executive Council of the University of Delhi existed delegating the power of dismissal to VPCI. It is further urged that the counter affidavit filed by the University is belated and, in substance, merely reiterates positions that have not found favour in earlier rounds of litigation.

Issues

7. The principal issues that arise for consideration are as follows:

7.1. Whether the Executive Council resolution dated 21st January, 1955 vested the Governing Body with disciplinary authority over the Petitioner during the relevant period.

7.2. Whether, despite the earlier judgments of this Court, Executive Council Resolution No. 32 dated 28th February, 2017/7th March, 2017 validly cured the defect earlier noticed, or whether it merely attempted retrospectively to validate action that was without authority when taken.

7.3. Whether the impugned order dated 2nd May, 2017 represents a fresh lawful exercise, or whether it rests on the same old disciplinary foundation which had already been set aside.

7.4. What relief should follow.

Discussion and reasons

8. The principal contention advanced by the Petitioner is that the

Governing Body of VPCI was never vested with the authority to act as the disciplinary authority in respect of the Petitioner. The Respondents seek to meet this contention by placing reliance on the 1955 Resolution, asserting that the said resolution conferred the requisite powers upon the Governing Body. In order to appreciate this submission, it is necessary to extract the relevant portion of the said resolution:

> *"2. Subject to the general control and supervision of the Executive Council, the Governing Body will manage the affairs of the Institute and shall have the following powers and functions:-*
> *(a) to organize the teaching and research in the Institute and to determine the staff and other requirements for the same. The Governing Body may constitute and Advisory Committee to advise it on matters of special interest which the Institute wishes to investigate. The Advisory Committee may include persons who are not connected with the University,*
> *(b) Subject to the control of the Academic Council, to prescribe the rules for admission of the students, resident and non-resident, and the fees to be paid by them,*
> *(c) to frame the Budget of the Institute and submit the same for approval to the Executive Council, and to incur expenditure within the limits fixed in the budget approved by the Executive Council,*
> *(d) To appoint Administrative, clerical and other staff of the Institute including those to whom academic and teaching functions are assigned, provided that the appointment of persons with teaching functions will be subject to their recognition by the University,*
> *(e) to make such rules as the Governing Body may think essential for the regulation of the business of the Institute, and*
> *(f) To exercise such other powers and functions, as may be assigned to them by the Executive Council."*

9. The submission advanced on behalf of the Respondents cannot be brushed aside as insubstantial. The 1955 Resolution is a foundational document: it constitutes the Governing Body, places it under the general control and supervision of the Executive Council, and vests in it, *inter alia*, the authority to appoint administrative, clerical and other staff. It also enables the Governing Body to exercise such further powers as may be

assigned to it by the Executive Council. However, the resolution does not, in express terms, designate the Governing Body as the disciplinary authority. Nor does it expressly empower the Governing Body to institute disciplinary proceedings for imposition of major penalties or to dismiss employees who are governed by a subsequent statutory regime, namely, the 1971 Rules, which themselves prescribe the authority competent to initiate such proceedings.

10. The Respondents have also emphasised the principle that the power to appoint ordinarily carries with it the power to remove. In a general administrative law context, that submission is not without force. However, the present case does not arise in a field governed merely by implication. The Petitioner's appointment was expressly subject to the 1971 Rules. The earlier judgment of this Court in W.P.(C) 2110/2013 proceeded on that very footing: it examined Rule 69 of the 1971 Rules, adverted to the relevant provisions of Ordinance XX, and specifically rejected the contention that the status of the Governing Body as appointing authority, by itself, conferred disciplinary jurisdiction. The Court observed, in substance, that such an argument might have had relevance in the absence of governing rules, but could not prevail where the service conditions were expressly regulated by the 1971 Rules.

11. Viewed in this light, the central difficulty in the Respondents' case becomes evident. While the 1955 Resolution undoubtedly confers upon the Governing Body the power to appoint, the material placed on record does not demonstrate a corresponding conferment of authority to act as the disciplinary authority for the purposes of imposing major penalties under the 1971 regime.

12. Rule 69 of the 1971 Rules provides that disciplinary proceedings may be instituted by the Executive Council or by any other authority empowered by it through a general or special order. The language employed is deliberate and significant. It places the authority to institute proceedings in the Executive Council, subject to delegation. The aforesaid judgment of the Single Judge construed the provision in precisely these terms. This was further reinforced in the review order dated 20th January, 2015, wherein it was recorded, on the basis of an affidavit filed by the University of Delhi, that no resolution of the Executive Council existed delegating the power of dismissal in favour of VPCI. If the reliance now placed on the 1955 Resolution were sufficient to conclusively establish such delegation, it would have been difficult for such a statement to be made before the Court.

13. Considerable reliance has also been placed by the Respondents on the observations of the Division Bench in LPA No. 106/2015. It is correct that the Division Bench took note of the reliance placed on the 1955 Resolution (Annexure R-2) and indicated a possible curative course by observing that the issue of disciplinary action could be placed before the Executive Council. However, the structure and effect of the order are of crucial importance. The Division Bench did not restore the original dismissal, nor did it disturb the finding of the Single Judge that no valid delegation had been demonstrated. It expressly said that the clarification being given was in consonance with the reasoning of the Single Judge. The order left the setting aside of the first termination untouched.

14. This position stands further reinforced by the subsequent judgment of the Division Bench in LPA No. 155/2016. The Court there stated, in unequivocal terms that the order dated 29th January, 2014, to the extent it set

aside the termination, had not been disturbed by the Division Bench. It further observed that that while the Executive Council Resolution dated 28th May, 2015 may have enabled the Governing Body to continue the disciplinary proceedings with prospective effect, there was no material to demonstrate that such authority vested in the Governing Body as on 18th February, 2013. These observations bear directly on the controversy at hand and militate against the Respondents' attempt to trace the requisite authority to an earlier point in time.

15. It is in this backdrop that the 2017 Resolution falls for consideration. The resolution states, *"for removal of any doubt whatsoever,"* the competent appointing and disciplinary authority since 21st January, 1955 has been the Governing Body. It proceeds further to expressly endorse the Governing Body's earlier decision dated 8th January, 2013 terminating the services of the Petitioner.

16. There are two possible ways of reading the 2017 Resolution. The Respondents contend that it is merely clarificatory in nature, whereas the Petitioner urges that it amounts to a retrospective validation of an otherwise invalid exercise of power. On the material presently available, the latter construction appears more persuasive, for several reasons.

17. First, the resolution does not confine itself to stating an abstract position of law. It expressly endorses the specific decision of the Governing Body dated 8th January, 2013. Such language is not ordinarily employed where the position is already settled and unambiguous; rather, it bears the imprint of an attempt to cure a defect in an earlier action.

18. Secondly, the correspondence preceding the resolution sheds light on the Respondents' own understanding of the position. VPCI's request to the

University dated 5th December, 2016 does not proceed on the footing that the competence of the Governing Body stood conclusively established. On the contrary, it seeks *"explicit/specific approval"* of the Executive Council for the decision taken by the Governing Body, and states that such approval is necessitated in view of the observations of the Division Bench.

19. Thirdly, if the 1955 Resolution were, by itself, sufficient to vest the Governing Body with disciplinary authority, and if that position stood accepted in the earlier round of litigation, the Respondents could have promptly initiated a fresh, legally compliant course. Instead, the course adopted was otherwise: the Petitioner was reinstated, simultaneously placed under suspension, and the earlier disciplinary action was forwarded to the University for approval. The 2017 Resolution thereafter proceeded to affirm, in broad and retrospective terms, that the Governing Body had, since 1955, always been the competent appointing and disciplinary authority.

20. These features, read cumulatively, lend considerable weight to the Petitioner's submission that the 2017 Resolution is not merely clarificatory, but is in substance an attempt at retrospective validation of an action earlier found to be lacking in authority.

21. The Circular dated 2nd February, 1981, relied upon by the Petitioner, also assumes significance in this context. It proceeds on the basis that the adoption of the 1971 Rules governing non-academic staff had attained finality. This circumstance further undermines the Respondents' attempt to revert to the 1955 and 1959 framework as the primary source of disciplinary authority, without demonstrating how such framework coexisted with, or prevailed over, the subsequently applicable 1971 Rules.

22. This brings the matter to the case law cited by the parties. In ***B.V.***

Gopinath, relied upon by the Petitioner, the Supreme Court drew a clear distinction between approval to initiate disciplinary proceedings and approval of the charge memorandum itself. It held that where the governing rules require the disciplinary authority to frame, or cause to be framed, the charge-sheet, the articles of charge attain validity only upon approval by the competent disciplinary authority; in the absence of such approval, the charge memorandum is rendered *non est* in law. Although this judgement was rendered in a different factual context, yet the principle applies with equal force to the present case, where the foundational action, namely, the initiation and culmination of disciplinary proceedings, was not undertaken by the authority mandated under the governing rules, and is sought to be validated only at a subsequent stage.

23. ***S.K. Jasra***, a recent Division Bench decision of this Court, applies the same principle in a clear and direct way. The Court held that where a charge-sheet is issued without the approval of the competent disciplinary authority, it is *non est* in law and cannot be validated by subsequent steps or ratification. This reasoning squarely applies to the present case, where an action initiated without competence is sought to be sustained through *post facto* approval.

24. The decision of the Supreme Court in ***Marathwada University*** is also apposite, and enunciates a broader principle of administrative law: where a statute or governing rules require a particular authority to act, that authority alone must exercise the power, unless delegation is expressly permitted. An action taken by an authority lacking such statutory competence is *void ab initio*, and cannot be cured by subsequent ratification. Ratification, in such circumstances, cannot travel beyond the source of power. The same

principle governs the present case, where the initial exercise of disciplinary power is traced to an authority not shown to have been duly empowered under the governing framework.

25. The Respondents have placed reliance on the judgments of the Supreme Court in ***Pannalal Choudhury and P.P.*** Singh. However, these decisions do not advance their case on the facts at hand. In ***Pannalal Choudhury***, an employee was dismissed pursuant to disciplinary proceedings initiated and continued by the Principal and Secretary, whose competence was under challenge. However, the material on record showed that the Board of Governors (the competent authority) had, through a series of resolutions, monitored and authorised the Principal and Secretary to take necessary action and had subsequently approved and ratified the dismissal. The Court held that, on those facts, the dismissal order stood ratified by the competent authority and thereby stood validated retrospectively.

26. Thus, in ***Pannalal Choudhury***, the competent had clearly authorised and remained involved in the decision-making process, and later expressly approved the action in continuation of that process. The ratification was in the nature of affirmation of an already authorised chain of action, rather than an attempt to cure a foundational lack of jurisdiction. In the present case, by contrast, there is no contemporaneous material demonstrating delegation or authorisation by the Executive Council at the time of initiation or culmination of the disciplinary proceedings. The 2017 Resolution is not a continuation of an existing authorised process, but an *ex post facto* attempt to confer validity upon an action already held to be without authority. That is why ***Pannalal Choudhury*** does not advance the Respondent's case.

27. The decision in ***P.P. Singh*** also arose in a materially different context.

The case concerned grant of selection scale to members of the Rajasthan Higher Judicial Service, where a two-Judge Committee, constituted by the Chief Justice, made recommendations that were subsequently placed before and approved by the Full Court. The challenge was to the Committee's authority The Supreme Court upheld the process, holding that the Rules empowered the Chief Justice to constitute such a Committee, and that its recommendations attained finality only upon approval by the Full Court. That position is also clearly distinguishable. In ***P.P. Singh***, the Rules expressly permitted such delegation, and the ultimate decision always rested with the competent authority, i.e., the Full Court. In the present case, however, the disciplinary proceedings were both initiated and concluded by an authority not shown to be empowered under the governing rules. The Executive Council, i.e., the competent authority under Rule 69, did not itself take the decision, but endorsed a concluded action. This is not a case of a preparatory act being approved, but of an entire proceeding conducted without authority and thereafter sought to be validated.

Conclusions and Findings

28. Viewed in the aforesaid light, the central issue admits of little doubt. The impugned order dated 2nd May, 2017 is not the outcome of a fresh and independent disciplinary exercise undertaken by a duly competent authority on the basis of a fresh charge memorandum. For the foregoing reasons, this Court is unable to accept the Respondents' contention that the 2017 Resolution validly cured the earlier defect. The more tenable view is that the resolution seeks, in effect, to retrospectively validate the competence of the Governing Body and to affirm its earlier decision dated 8th January, 2013. Such a course is impermissible in the facts of the present case.

29. The Respondents' submission that the challenge is belated, or that the matter ought to be brought to a quietus in view of repeated rounds of litigation, also does not commend acceptance. While it is true that the Petitioner has approached the Court on multiple occasions, much of that history is attributable to the manner in which the earlier judgment was not given effect to, leading to successive proceedings in review, appeal, clarification, and contempt. In any event, where the challenge goes to the very competence and jurisdiction underlying the impugned action, considerations of delay or multiplicity cannot operate to validate what is otherwise unsustainable in law.

30. It is equally true that the Court in the first round did not examine the charges on merits. That is why care is needed in crafting the final relief. The Court is not called upon, in the present writ petition, to pronounce on the factual truth or otherwise of the nine articles. The case turns on authority, structure, and legal source of power.

Relief

31. The writ petition is accordingly allowed in the following terms:

31.1. The order dated 2nd May, 2017 terminating the services of the Petitioner is set aside. Consequently, the Petitioner shall be reinstated in service.

31.2. Executive Council Resolution No. 32 dated 28th February, 2017/7th March, 2017, insofar as it declares the Governing Body as the competent appointing and disciplinary authority for the Petitioner since 21st January, 1955; and insofar as it endorses the Governing Body's decision dated 8th January, 2013, shall not operate against the Petitioner.

31.3. The Respondents are at liberty to initiate fresh disciplinary

proceedings, including issuance of a fresh charge memorandum by the competent authority in accordance with the 1971 Rules, subject to conferment of the requisite powers by a general or special resolution of the Executive Council, read along with the directions contained in judgement dated 29th January, 2014 in W.P.(C) 2110/2013 and the judgment dated 25th February, 2015 in LPA 106/2015.

31.4. The Respondents shall, within a period of four weeks from the date of this order, take a considered decision as to whether disciplinary proceedings are required to be initiated against the Petitioner and communicate the same to the Petitioner.

31.5. In the event the Respondents decide to initiate disciplinary proceedings, the same shall be conducted strictly in accordance with the applicable Rules, and concluded as expeditiously as possible, preferably within a period of six months from the date of initiation.

31.6. Since the Court has not examined the merits of the charges and the impugned order is set aside on the technical ground of lack of authority, it is directed that, in the event the Respondents decide to initiate disciplinary proceedings, it shall be open to them to place the Petitioner under suspension in accordance with the applicable service rules, in which event he shall be entitled to subsistence allowance as per law. The question of back wages and other consequential benefits shall be determined by the disciplinary authority in accordance with law upon conclusion of the fresh inquiry, if initiated.[10]

31.7. In the event the Respondents do not initiate disciplinary proceedings against the Petitioner within the aforesaid period, they shall pass an

appropriate order regarding back wages and continuity of service, in accordance with law.

32. It is clarified that this judgment does not adjudicate upon the merits of the nine articles of charge. All right and contentions of the parties to that extent are reserved.

33. In view of the foregoing, the petition is disposed of.

SANJEEV NARULA, J

APRIL 28, 2026/*hc*

[10] See: Coal India Ltd. v. Ananta Saha, (2011) 5 SCC 142; ECIL v. B. Karunakar, (1993) 4 SCC 727.