

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
 CIVIL MISCELLANEOUS WRIT PETITION NO. OF 2010
 [UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA]

DIST : ALIGARH

GROUP:

Dr. Shrinivas Ramchandra Siras)	
Chairman and Reader,)	
Department of Modern Indian Languages)	
Aligarh Muslim University,)	
Aligarh – 202002.)	
Presently residing at 3/69 A, Gauranchal)	
House of Devi Singh, Durgawadi)	
Marrsih Road, Aligarh 2020001)	
Uttar Pradesh)	
Age: 64 years)	
Occupation: Service)	Petitioner
Versus		
1. The Aligarh Muslim University,)	
Through the Registrar,)	
Aligarh, 202002, Uttar Pradesh.)	
2. The Vice-Chancellor,)	

Aligarh Muslim University,)
Aligarh – 202002 Uttar Pradesh)
3. The Registrar)
Aligarh Muslim University,)
Aligarh – 202002 Uttar Pradesh) Respondents

TO,

THE HON'BLE THE CHIEF JUSTICE AND OTHER PUISE
JUDGES OF THIS HON'BLE HIGH COURT

THE HUMBLE PETITION OF

THE

PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. This is the first petition filed by the Petitioner against the Respondents in respect of the orders impugned in this Petition. No other petition has been filed or is pending in this Hon'ble Court or in any other High Court or in the Supreme Court of India or any other court in India.

2. The Petitioner has not received any caveat from any of the Respondents in respect of the orders impugned in this petition.
3. The Petitioner is an adult, resident of Aligarh, presently residing at the address mentioned against his name in the cause title. He is an Indian citizen. The Respondent No. 1 is a statutory body located at Aligarh. All the Respondents have their offices in Aligarh and the entire cause of action has arisen in Aligarh. This Hon'ble Court therefore has jurisdiction under Article 226 of the Constitution of India to try and entertain this petition.
4. The Petitioner is a Reader at the Respondent University and, till the impugned orders were issued to him, also the Chair of the Department of Modern Languages of the Respondent University. The Petitioner is filing this Petition challenging diverse orders suspending him with immediate effect, and having the effect to him relinquishing the charge as the Chair of the said Department, directing him to vacate the residential quarters allotted by the Respondent University and directing him not to leave Aligarh without the prior permission of the Respondent No. 2 and an order charge sheeting him and other consequential reliefs.

5. The Respondent No. 1 is the Aligarh Muslim University (hereinafter referred to as the “Respondent University”) and is established under and governed by the Aligarh Muslim University Act, 1920 which came into force from 01.12.1920 (hereinafter referred to as “the Act”). The Respondent University is a statutory body, and in accordance with the provisions of the Act, is an educational institution carrying out a public function of imparting education to all. The Respondent University is a ‘State’ as defined under Article 12 of the Constitution of India and is therefore amenable to the writ jurisdiction of this Hon’ble Court. The Respondent No. 2 is the Vice-Chancellor, the principal executive and academic officer of the Respondent University, and exercises general supervision and control over the affairs of the Respondent University and gives effect to the decisions of all the authorities of the Respondent University. The Respondent No. 3 is the Registrar of the Respondent University and has the power to enter into agreements, sign documents and authenticate records on behalf of the Respondent University.
6. The orders impugned in this petition have been passed in the following circumstances. The Petitioner is a gay man of

homosexual orientation. He has had a relationship with a male person in Aligarh. The said person had been visiting the Petitioner at the Petitioner's residence located on the premises of the Respondent University, which was allotted to the Petitioner by the Respondent University. On 08.02.2010, the said person was at the home of the Petitioner on the premises of the Respondent University and the Petitioner and the said person had gone to the Petitioner's bedroom. Unknown to them, three persons, allegedly from the media, had barged into the Petitioner's house, without the consent of the Petitioner. The said three media persons took photographs (apparently stills and video) of the Petitioner and his friend after issuing threats to them, thereby completely violating the privacy and dignity of the Petitioner and his friend and subjecting them to humiliating indignities. It appears that the said three media persons were in the Petitioner's home with the connivance of unknown staff members of the Respondent University. The said media persons told the Petitioner that they had come to his house as the residents of the Respondent University had complained about the Petitioner's sexual orientation and his relationship with the said person. They

told the Petitioner that they had come to take photographs/video of the Petitioner and his friend and make them public. While the Petitioner was pleading with the said media persons not to take any photographs or video recordings of him or his friend and/or not to publish or make the same public, some of the senior staff members of the Respondent University turned up at the Petitioner's home, though they had not been called by the Petitioner, clearly evidencing that they were in the know of the operation and were complicit to the same. The Respondents, instead of taking action against the media persons in respect of the media persons for breaching the security of the Respondent University's campus and for violating the Petitioner's privacy and dignity, issued the impugned orders suspending the services of the Petitioner with immediate effect, thereby also removing him from the office of the Chair of the Department of Modern Indian Languages, directing the Petitioner to vacate his staff quarters and further directing him not to leave Aligarh without the prior permission of the Respondent No. 2 and ultimately issuing him a charge sheet for misconduct of having "indulged himself into immoral activities and in

contravention of basic moral ethics". The said orders and charge sheet are being challenged in this Petition on the ground that the Petitioner's private life and actions carried out in the privacy of his home are protected from intrusion under Article 21 of the Constitution and the Petitioner's homosexual relations privately with another adult person in the privacy of his home cannot form the basis of a misconduct and that the Respondent No.1 University's impugned orders and charge sheet are in violation of his fundamental rights under Articles 14, 15, 16, 19 and 21 of the Constitution of India. On the contrary, the Petitioner submits that the actions of the Respondent University or its authorities /agents in allowing the said three media persons to barge into the privacy of his home, either on account of active or tacit connivance of the University staff, or negligence, have violated his rights to privacy, thereby rendering the University and its authorities / agents liable for damages.

7. The charge sheet issued to the Petitioner discloses the names of two persons from the media who had intruded into his house, and identifies them as one Syed Adil Mutraza of TV100 news channel and one Ashu Misam from Voice of India TV channel.

The Petitioner has tried to ascertain their whereabouts and the correctness of their identities. To his surprise, he was unable to contact TV100 news channel, and found that the name of Ashu Misam, the second reporter named in the charge sheet, was not correct. Therefore, the Petitioner has been unable to implead the said media persons as parties to this petition.

8. The facts leading to the filing of the instant petition are as follows.
9. The Petitioner is a middle-class person from a respectable family and hails from Nagpur.
10. The Petitioner is an extremely learned and qualified person. The Petitioner is qualified with a double post graduate degree having completed his Masters of Arts in Marathi and Masters of Arts in Psychology from Nagpur University in the years 1974 and 1980 respectively. Annexed hereto and marked as **Annexure “1”** and **Annexure “2”** are copies of the relevant certificates issued by the Nagpur University, showing the Petitioner’s qualification as Master of Arts in Marathi and Master of Arts in Psychology respectively. The Petitioner has also obtained a Doctorate of Philosophy (Ph. D) in the faculty of Arts from Nagpur

University in the year 1985. A copy of certificate is this behalf is annexed hereto and marked as **Annexure “3”**.

11. In the year 1985, the Petitioner obtained a Diploma in Medical and Social Psychology from Ranchi University. A copy of this certificate in this respect is annexed hereto and marked as **Annexure “4”**.
12. Sometime in the year 1986-1987, the Petitioner, after completing his education, started working as a Lecturer in G. T. Patil College of Arts, Science & Commerce at Nandurbar in Maharashtra.
13. Sometime in the year 1987, an advertisement appeared in the Journal of the University Grants Commission inviting applications to fill up vacancies for the post of Lecturers in the Department of Modern Indian Languages of the Respondent University. The Petitioner, being qualified for the said post, applied to the Respondent University for the said vacancy.
14. Thereafter, on 16.02.1988, the Petitioner was called for an interview. Finally, after due process, on 18.03.1988, the Petitioner was appointed as a Lecturer for Marathi language in the Department of Modern Indian Languages of the Respondent University on a probation period of one year.

15. Thereafter, on 18.03.1989, the Petitioner's services as a Lecturer for Marathi language in the Department of Modern Indian Languages were confirmed by the Respondent University. Since then, the Petitioner has been working on a permanent basis with the Respondent University. Initially, the Petitioner stayed in a rented apartment at Aligarh.
16. On 06.09.1994 a meeting of the Screening Committee was held for placement of Lecturers in the Senior Scale in the Department of Modern Indian Languages of the Respondent University. Thereafter, sometime in the year 1994, the Petitioner was promoted to the post of a Senior Lecturer.
17. Subsequently, in the year 1998, the Petitioner was promoted to the post of Reader in the Department of the Modern Indian Languages of the Respondent University. His job involved functions, which were administrative and supervisory in nature. The Petitioner has been dedicatedly carrying out all the duties and responsibilities entrusted to him. The Respondent University has never had any cause of complaint against the Petitioner with respect to the discharge of his duties.
18. In 1992 and 2003, the Petitioner successfully completed the Refresher Course conducted by the Academic Staff College.

Copies of these certificates in this behalf are annexed hereto and marked as **Annexure “5” to Annexure “6”**. During his service, the Petitioner has also participated at various workshops and international conferences and added to the repute of the Respondent University. Besides this, the Petitioner has actively participated in various workshops such as the University Grants Commission-Special Assistance Programme (UGC-SAP) Workshop on Morphological Parsing for Indian Languages organised by the Centre of Advanced Study in Linguistics, Annamalai University from 17.02.2003 to 26.02.2003; the International Conference organised by the Mahatma Gandhi International Hindi University, Vardha from 14.02.2008 to 16.02.2008; the Biennial International Conferences organized by the Comparative Literature Association of India at Surat, Kolkata and Hyderabad in the years 2005, 2007 and 2009 respectively. Annexed hereto and marked as **Annexure “7” to Annexure “11”** are copies of the Petitioner’s participation certificates at these workshops and International Conferences. In the year 2002, the Petitioner was awarded the *Maharashtra Sahitya Parishad* award for his collections of poems viz., ‘*Grass Under My Feet*’.

19. The Petitioner is a Doctor in Philosophy and possesses exceptional professional skills. He is extremely competent in his work. Throughout his tenure of 22 years of service till date, the Petitioner's performance has been extremely outstanding. He has been very dynamic, obedient and highly responsible about his professional assignments throughout his career.
20. When the Petitioner initially took up services with the Respondent University, he stayed in a rented apartment. Thereafter, sometime in the year 2000, in accordance with the rules, the Petitioner was allotted a staff quarters/accommodation by the Respondent University at C-12 Zakir Baugh. Subsequently, because of security problems, the Petitioner was allotted a flat, being Quarter No. C-21, Medical Colony Campus, in the campus of the Respondent University (hereinafter referred to as "the said residential quarters"). The Petitioner was entitled to a bigger apartment/quarter as per his basic pay and designation. However, he opted to reside in a smaller one, though he paid the rent as that of a bigger quarter. Since 2002, the Petitioner has been residing at the said residential quarters until he was constrained to vacate it pursuant to the memo/order

dated 09.02.2010, as set out below, which is one of the orders impugned in this petition.

21. Since 1998, the Petitioner has been working as a Reader at the Department of Modern Indian Languages of the Respondent University. In 2006 the Petitioner became eligible for appointment as a Professor. However, since the Selection Committee was not formed, the Petitioner could not be appointed to the said post.
22. On 13.06.2009, the Petitioner took over as the Chairman of Department of Modern Indian Languages of the Respondent University. Since then, he has been designated and was working as a Reader and Chairman of the Department of Modern Indian Languages of the Respondent University.
23. The Petitioner says and submits that he is a gay man and a homosexual by sexual orientation. The Petitioner discovered his sexual orientation for the first time when he was 15 years old. Furthermore, the Petitioner's sexual orientation was a fact known to some people, including some persons at the Respondent University. The Petitioner says and submits that his sexual orientation has never been a nuisance or a matter of concern to anyone.

24. The Petitioner says and submits that he had shared an intimate relationship with a man (friend) from Aligarh. On 08.02.2010, the said friend of the Petitioner came to the said residential quarters. After the arrival of his friend, the Petitioner and his friend sat and talked for a while in the living/drawing room. After talking for some time, the Petitioner and his friend headed to the bedroom. Unknown to the Petitioner and his friend, three men had already entered the said residential quarters without the Petitioner's consent or authorisation. All of a sudden, the said three men made their presence known to the Petitioner and his friend. These said three men had cameras in their hands. They told the Petitioner and his friend that they wanted to take pictures of the Petitioner and his friend in the state they were in. The Petitioner's friend moved away and stood in the corner of the room and wear his clothes. However, the said three men did not allow the Petitioner to dress himself. They threatened the Petitioner with unforeseen consequences if he did not follow their instructions. They intimidated the Petitioner and forced him stand in various positions and took photographs or video recordings of the Petitioner. One of those three men said, *"Rokoo, hum press se hain aur hum tumhe shoot karne wale"*

hai” meaning, “*We are from the press and we are going to shoot you*”. However, the said three men did not reveal their identities to the Petitioner. The Petitioner and his friend were in a state of complete shock and did not realise what was happening. The Petitioner had to very reluctantly submit to the force/pressure from the said three men. He was subjected to extreme humiliation and indignity at the hands of the said three men, who invaded his privacy. After the three men had taken photographs / video recordings of the Petitioner, the Petitioner was allowed to wear his clothes. When the Petitioner asked the said three men as to what they were doing in the said residential quarters, one of them said, “*We have complaints from the University residents about your homosexual nature and that you are indulging in homosexual activities in the University colony/premises*”. The said three men also threatened the Petitioner that they would be publishing his photographs. The Petitioner requested them not to publish the pictures and was pleading with them not to publish them. While the Petitioner was thus pleading with the said three men, some of the professors of the Respondent University, including the Proctor, Professor M. Zubair Khan,

the Public Relations Office, Dr. Rahat Abrar, the Media Advisor, Professor N. A. K. Durrani, and the Deputy Proctor, Dr. Fareed Ahmad Khan entered the said residential quarters. The Petitioner was extremely shocked and surprised to see his colleagues at his flat at that point of time as neither had he called any of them for any help nor had he invited any of them to his house that day. The said professors and staff of the Respondent University and the said three persons, who claimed to be from the media, spoke to each other in hushed tones for some time in the drawing room at the Petitioner's residential quarters. The Petitioner is not aware of the conversation between them. The Petitioner was completely alarmed at the turn of developments. As a result the Petitioner was not feeling well. Dr. Afzal Anees from the University Campus was called to check his blood pressure and examine him. Later, the University professors and staff and the said three men left the said residential quarters. After some time, even the Petitioner's friend, who too was very shocked and traumatised by the whole incident, also left from the said residential quarters.

25. The Petitioner submits that the above shocking incident called for action by the authorities of the Respondent University against the said three men, who had trespassed onto the premises of the Respondent University and also intruded into the Petitioner's privacy and subjected him to humiliation and indignities. If the said three men either had entered into the premises of the Respondent University's campus without permission or connivance of the Respondent University and / or its agents, the Respondent University ought to have taken action against them. However, to the Petitioner's knowledge, this has not been done. The Petitioner verily believes that the said three men could not have entered the University premises of the Respondent University's campus without leave of the staff of the Respondent University. Even if they entered without the tacit or active connivance of the Respondent University staff, the Respondent University is liable for the negligence of its staff.
26. Instead of taking action against the said three men, it appears that on 09.02.2010, the Proctor, Professor M. Zubair Khan, and the Public Relations Officer, Dr. Rahat Abrar, submitted a joint report to the Respondent No. 2 regarding the incident that occurred on the previous day, i.e. on 08.02.2010 and which has

been set out herein above. A copy of the said joint report dated 09.02.2010, which the Petitioner received along with the Memorandum and Article of Charge later as set out below, is annexed hereto and marked a **Annexure “12”**.

27. On the basis of this joint report dated 09.02.2010, on 09.02.2010, the Respondent No. 2 directed that the Petitioner be suspended from services with immediate effect in purported exercise of his powers under Statute 40(3)(c) of the Statutes of the Respondent University and also directed that the Petitioner should vacate the said residential quarters, being University Quarter No. C-21, Medical Colony Campus, Aligarh Muslim University, Aligarh, within a week of receipt of the letter notifying the Petitioner of the same. Consequently, on 09.02.2010 itself, pursuant to the direction from the Respondent No. 2, the Vice Chancellor, the Respondent No. 3 (Registrar) issued an Office Memo dated 09.02.2010, bearing No. D/DE/894/0448, the original of which is annexed hereto and marked as **Annexure “13”** and a typed copy of which is annexed hereto and marked as **Annexure “13-A”**, whereby the Petitioner was informed of his suspension with immediate effect. The said Office Memo further directed/ordered that during the

period that the order shall remain in force, the Petitioner shall not leave Aligarh without obtaining prior permission of the Respondent No. 2 (Vice Chancellor).

28. Furthermore, the Respondent No. 3 (Registrar) issued a memo bearing No. D/DE/894/0449 dated 09.02.2010 to the Petitioner informing him that the Respondent No. 2 (Vice Chancellor) had ordered the Petitioner to vacate the said residential quarters, being University Quarter No. C-21, Medical Colony Campus, Aligarh Muslim University, Aligarh, which was occupied by the Petitioner since 2002. The original of the aforesaid memo / letter is annexed hereto and marked as **Annexure “14”** and a typed copy of the same is annexed hereto and marked as **Annexure “14-A”**.
29. On 10.02.2010, one Professor Shaikh Mastan was appointed as the Chairman of the Department of Modern Indian Languages for the duration of the suspension of the Petitioner. A copy of this letter dated 10.02.2010, which was also copied to the Petitioner, is annexed hereto and marked as **Annexure “15”**.
30. On 13.02.2010, the Department of Property and *Waqfs* of the Respondent University, vide its letter dated 13.02.2010, a copy of which is annexed hereto and marked as **Annexure “16”**,

informed the Electrical Engineer Supply/Maintenance of the Respondent University, that in pursuance of the order/memo No. D/DE/894/0449 issued by the Respondent No. 3, the said residential quarters which was in the possession of the Petitioner would be taken over on 16.02.2010 and also called upon the Electrical Engineer to depute his staff for the said purpose. A copy of this letter was also marked to the Petitioner.

31. The Petitioner, vide his letter dated 15.02.2010, a copy of which is annexed hereto and marked as **Annexure "17"**, requested the Department of Property and *Waqfs* of the Respondent University to give him one month's time to search for a new accommodation for shifting since he was unable to find one. However, the Petitioner did not receive any reply to this letter. Finally, on 17.02.2010, the Petitioner in order to comply with the said order, directing him to vacate his residential quarters, moved out of his residential quarters and managed to find an alternate accommodation for himself. However, within a couple of days, the owner of the house to which the Petitioner had moved, asked the Petitioner to vacate this rented house on the ground that the Petitioner had deliberately concealed the fact that there was a dispute on account of his sexual orientation.

Therefore, the Petitioner again had to look for a new accommodation for himself. Fortunately, within a week's time, the Petitioner found another place he could rent and shifted to this new house, which is the house whose address is mentioned in the cause title against his name. The Petitioner had to pay very high amounts and bear heavy expenses to obtain this new house on rent.

32. The Petitioner says and submits that on one occasion, the Petitioner was informed that the Respondent University's electrician/technician would be coming to the Petitioner's residential quarters to remove the meter. However, as the Petitioner could not reach his quarters at the scheduled time on that day, the Respondent University's electrician/technician had to come again on 02.03.2010 to remove the meter. The Petitioner removed his locks from the doors of the said residential quarters and handed over the possession of the said residential quarters only on 02.03.2010. Thus, though the Petitioner vacated the said residential quarters on 17.02.2010, the Petitioner was officially in possession of the said residential quarters until 02.03.2010. The Petitioner says and submits that he is facing tremendous hardships on account of moving from

one place to another in light of the impugned order directing him to vacate the residential quarters.

33. On 03.03.2010 and 04.03.2010, the Petitioner went to the Civil Lines Police Station, Godhpur, Aligarh, to lodge a First Information Report to place on record the incident that took place on 08.02.2010 and also to lodge a complaint against the three unknown/anonymous people, who claimed to be from the media and had intruded into the said residential quarters. However, the police authorities refused to take down the Petitioner's complaint. Therefore, on 04.03.2010 and 05.03.2010, the Petitioner sent a copy of his complaint under certificate of posting and by registered AD respectively. A copy of this complaint is annexed hereto and marked as **Annexure "18"**. The charge sheet issued to the Petitioner by the Respondents discloses the names of two persons from the media out of the three unknown persons, who had intruded into the said residential quarters, and identified them as one Syed Adil Murtaza of TV100 news channel and one Ashu Misam from Voice of India TV channel. However, later when the Petitioner tried to ascertain their names and identities, he could not succeed

in the same and hence has been unable to implead the said media persons as parties to the petition.

34. In the meantime, i.e. on 24.02.2010, an Article of Charge, vide Memorandum No. D/DE/894/0467, was issued to the Petitioner by the Departmental Enquiries Section of the Respondent University proposing to hold an inquiry against the Petitioner under Statute 40(3)(c) of the Statutes of the Respondent University for the Petitioner's alleged misconduct/misbehaviour regarding the incident that took place on 08.02.2010. The original of the Memorandum No. D/DE/894/0467 dated 24.02.2010, along with its annexures is annexed hereto and marked as Annexure "19" and typed copy of the same is annexed hereto and marked as Annexure "19-A". The Article of Charge 1 mentions that the Petitioner had "indulged himself into immoral sexual activity and in contravention of basic moral ethics," and that it "thereby undermined pious image of the teacher community and as a whole tarnished the image of the University." The Petitioner submits the said term is not a specified misconduct. In any event the expression is vague. Moreover, the said expression cannot apply to sexual activity in the privacy of one's home.

35. The Petitioner says and submits that the contents of the said Memorandum/Article of Charge are neither true nor *bona fide* and there appears to be a conspiracy on the part of some persons at the Respondent University to harass and embarrass the Petitioner.
36. By a letter dated 06.03.2010, the Petitioner submitted his reply to the said Article of Charge before the Respondent University denying the allegations and placing on record the true facts of the incident that occurred on 08.02.2010. A copy of the said Petitioner's reply to the Article of Charge is annexed hereto and marked as **Annexure "20"**.
37. The Petitioner says and submits that the Selection/Screening Committee was scheduled to meet on 08.03.2010 for appointments to the post of Professorship in the Department of Modern Indian Languages of the Respondent University. The Petitioner is eligible for professorship since the year 2006; however, since the Selection Committee was not constituted, he could not be appointed to the said post till date. The Petitioner's name appears at the top of the seniority list for appointments to the post of Professors. The Petitioner says and submits that the entire incident of 8.02.2010 appears to be orchestrated and deliberate one to frame the Petitioner and to tarnish his image

and disentitle/debar him from promotion to the post of Professor, for which the Petitioner is qualified and experienced and to which he is entitled.

38. On 08.03.2010, the Petitioner sent a letter to the Respondent No. 2, a copy of which is annexed hereto and marked as **Annexure "21"**, requesting the meeting of the Selection Committee be postponed till his name was cleared so that the Petitioner is not prejudiced on account of the disciplinary proceedings against him. The Petitioner has not received any reply to this letter.
39. Since then, the Petitioner has learnt that the Selection Committee is scheduled to meet again on 16.03.2010.
40. The Petitioner says and submits that he has been working in the Respondent University for the past 22 years. He is due to retire from services in September 2010. The Petitioner further submits that throughout his service period, the Petitioner has been an extremely obedient, duty-bound and responsible person. Furthermore, he has never indulged or engaged in any kind of immoral, unethical and/or irresponsible behaviour which would bring disrepute to or undermine the image of the community of teachers as a whole and/or the Respondent University in specific. The Respondents have charged the Petitioner with

absolutely false and baseless allegations with the malicious intention of causing harm to the Petitioner. The Respondents have arbitrarily and unjustifiably suspended the services of the Petitioner and ordered the Petitioner to vacate the residential quarters allotted to him, where he had been residing since the year 2002 and restricted his movements. The Petitioner is facing tremendous hardships due to the irrational, illogical, and irresponsible behaviour, actions and decisions of the Respondents.

41. The Petitioner says and submits that he has not concealed the fact that he is a gay man or a homosexual by orientation. The Petitioner's sexual orientation and his sexual activity in this regard in the privacy of his own home cannot, by any stretch of imagination, be considered "immoral sexual activity and in contravention of basic moral ethics" or which would be such that would "undermine the pious image of the teacher community" or "tarnishing the image of the Respondent University". The Petitioner's sexual orientation and his actions in the privacy of his home is no person's concern. The Petitioner is entitled to exercise the fundamental right to privacy vested in him by the Constitution of India. The staff of the Respondents, by entering

into the Petitioner's house without his permission, knowledge and consent and later creating a scene/scandal/issue out of the whole episode, have violated the Petitioner's fundamental rights as guaranteed to him under the Constitution of India only to embarrass and cause injury to the Petitioner.

42. The Petitioner says and submits that the above narrated incident of 08.02.2010 that took place at the said residential quarters, wherein he was photographed, could not have been executed without the active or passive connivance of the staff of the Respondent University. The Petitioner believes that there was a conspiracy between the staff of the Respondent University staff and the unknown persons, who claimed to be from the media, to humiliate, ridicule and embarrass the Petitioner on account of some persons' hostility against the Petitioner because of his sexual orientation. The Petitioner says and submits that it is evident from the fact that the so-called media persons were allowed to enter the premises of the Respondent University without any problem coupled with the fact that the three media persons were later conversing with the senior staff members of the Respondent University that the whole operation was preplanned by some of the staff of the Respondent University.

The Petitioner submits that his sexual orientation and his actions in his private house are not a concern of the Respondents and is protected by his fundamental right to privacy under Article 21 of the Constitution. In respect of his employment, Articles 14, 15 and 16 of the Constitution of India guarantees the Petitioner the fundamental rights to equality and the right to non-discrimination on the basis of his sexual orientation. Moreover, any type of sexual relationship engaged in by the Petitioner in the privacy of his house cannot, by any stretch of imagination, amount to misconduct for the purposes of his employment as under Statute 40 (3) (c) of the Statutes of the said Act. The conduct of the Respondents in suspending the Petitioner from services and restricting him from leaving the jurisdiction of Aligarh vide memo No. D/DE/894/0448 and directing the Petitioner to vacate the said residential quarters vide memo no. D/DE/894/0449 and issuing the Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 along with the Article of Charge to the Petitioner, thereby proposing to hold an inquiry against him, and, is absolutely uncalled for, illegal, arbitrary and unsustainable and therefore the same ought to be quashed and stayed pending hearing and final disposal of this petition.

43. This petition is filed in time and the same does not suffer from any laches or delay.
44. In the circumstances aforesaid, the Petitioner is left with no alternative but to challenge the orders impugned herein, namely Office memo No. D/DE/894/0448 dated 09.02.2010 suspending the services of the Petitioner with immediate effect and restricting him from leaving the jurisdiction of Aligarh and to challenge the memo No. D/DE/894/0449 dated 09.02.2010 directing the Petitioner to vacate the said residential quarters and the Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 along with the Article of Charge, except by filing this petition and therefore approaches this Hon'ble Court for reliefs prayed for in the present petition on the following, amongst other grounds, which are without prejudice to each other:—

GROUND

- I. The Petitioner is a highly learned and reputed person and has a good service record.**

- (i) The Petitioner is a 64-years old, highly qualified, learned and reputable person hailing from a respectable family.
- (ii) The Petitioner has been working at the Respondent University since 1988 for a period of almost 22 years.
- (iii) Throughout his tenure of 22 years of service, till date, the Petitioner's performance has been extremely outstanding. The Petitioner has been very dynamic, obedient and highly responsible throughout his career. He has actively participated in various workshops, seminars and conferences and has brought name and repute to the University. The Petitioner has devotedly discharged the duties and responsibilities assigned to him.
- (iv) The Respondent University has never had any cause of complaint against the Petitioner with respect to the discharge of his duties
- (v) The Petitioner has never "indulged himself into immoral sexual activity and in contravention of basic moral ethics," or which would "thereby undermined pious image of the teacher community and as a whole tarnished the image of the University."

II. The Respondent No. 1 is a State within the meaning of Article 12 of the Constitution of India.

- (vi) The Respondent University is a statutory body established by and governed by the Act.
- (vii) The Respondent No. 1 is an educational institution carrying out a public function of imparting education to all.
- (viii) The Respondent No. 1 is therefore a State within the meaning of Article 12 of the Constitution of India.
- (ix) The Respondent No. 1 is therefore bound to act in accordance with constitutional principles.

III. The Petitioner is entitled to the fundamental rights to privacy and dignity, equality and non-discrimination on the basis of sexual orientation, and freedom of movement.

- (x) The Constitution of India guarantees certain fundamental rights to persons.
- (xi) The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which India is a

signatory, too recognize certain human rights of all persons.

- (xii) The Protection of Human Rights Act, 1993 domesticates the human rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- (xiii) It is also an established position of law that the International Covenant on Civil and Political Rights can be used to expand and effectuate the scope of fundamental rights guaranteed under the Constitution of India.

Right to privacy

- (xiv) Article 21 of the Constitution of India recognizes the right to life and personal liberty of every person.
- (xv) It is an established position of law that the right to life and personal liberty under Article 21 includes the right to privacy and the right to live with dignity.
- (xvi) Article 17 of the *International Covenant on Civil and Political Rights* recognizes the right to privacy of every person and provides: “No one shall be subjected to arbitrary or unlawful interference with his privacy,

family, home or correspondence, nor to unlawful attacks on his honour and reputation”.

- (xvii) The Petitioner thus has an enforceable right to privacy under Indian law.

Right to dignity

- (xviii) It is an established position of law that the right to life under Article 21 of the Constitution of India means a right to live with human dignity. [See *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608, at pages 618–619, para 8]
- (xix) The preamble to the Constitution of India indicates that the Constitution of India is designed to assure the dignity of every individual.
- (xx) The rights to privacy and equality are also closely interlinked with the right to dignity.
- (xxi) The right to dignity of a person is violated when s/he is demeaned or degraded or unfairly treated.
- (xxii) The Petitioner has an enforceable right to dignity.

Right to equality and non-discrimination

(xxiii) Article 14 of the Constitution of India guarantees the right to equality to all persons within the territory of India.

(xxiv) Article 15 of the Constitution of India prohibits discrimination by the State against a citizen on certain enumerated grounds including sex.

(xxv) Similarly, Article 16 of the Constitution of India guarantees equality of opportunity in matters of public appointment and prohibits discrimination in respect of employment or office under the State on certain enumerated grounds, including sex.

(xxvi) The Hon'ble Delhi High Court has, in *Naz Foundation v. Government of National Capital Territory of Delhi*, 2010 Cr. L.J 94, held that Article 15 prohibits discrimination on the ground of sexual orientation.

(xxvii) Article 26 of the International Covenant on Civil and Political Rights too recognises the right to equality of all persons and prohibits discrimination on any ground, including sex or other status.

(xxviii) It is an established position of law that Article 26 of the International Covenant on Civil and Political

Rights prohibits discrimination on the ground of sexual orientation of a person [See *Toonen v. Australia*, No. 488/1992, CCPR/C/50/D/488/1992 (March 31, 1994)].

(xxix) The Petitioner is therefore entitled to the fundamental rights to equality and non-discrimination on the ground of sex and his sexual orientation.

Right to freedom of movement

(xxx) Article 19(1)(d) of the Constitution of India guarantees to all citizens the fundamental right to freedom of movement.

Conclusion

(xxxi) That, as explained below, the actions of the Respondent University and other Respondents have violated the Petitioner's rights to privacy and dignity, equality and non-discrimination and freedom of movement under the Constitution of India.

IV. The Respondents and/or their agents have caused the violation of the Petitioner's fundamental right to privacy under Article 21.

(xxxii) On 08.02.2010, three persons claiming to be media persons unauthorisedly entered the said residential quarters and his bedroom and took photographs / video of the Petitioner, thereby violating the Petitioner's right to privacy.

(xxxiii) After some time, the Respondent University's staff members too unexpectedly entered the Petitioner's residential quarters without being invited by the Petitioner.

(xxxiv) The aforementioned incident could not have been executed without the active or passive connivance of the Respondent University or its staff or agents. Therefore the Petitioner submits that the said incident was a planned conspiracy against the Petitioner to cause severe embarrassment and injury to the Petitioner. The Respondent University is therefore liable for the same.

(xxxv) The fact that the so-called media persons were allowed to enter the premises of the Respondent University without any problem indicates the complicity of the Respondent University or its staff in the operation.

(xxxvi) The fact that the said three persons, who claimed to be from the media, were later conversing with the Respondent University's staff is further evidence of the conspiracy between them.

(xxxvii) The conspiracy between the Respondent University or its staff and the purported media persons was a well planned act/operation to frame the Petitioner and embarrass him on account of some persons' hostility against him because of his sexual orientation.

(xxxviii) The intrusion by the said three media persons into the Petitioner's residential quarters and their actions of humiliating and degrading the Petitioner and photographing him without his consent, with the active connivance of the staff of the Respondent University is a flagrant violation of the Petitioner's right to privacy and dignity. It constitutes an arbitrary and unlawful interference with the Petitioner's privacy and home and also resulted in unlawful attacks on his honour and reputation.

- (xxxix) The Respondent University is vicariously liable for the acts of commission or omission of its staff in allowing (whether in presence of conspiracy or otherwise) the said media persons to enter the University campus thereby infringing the Petitioner's right to privacy.
- (xl) The Respondent University is therefore liable for the violation of the Petitioner's fundamental right to privacy and is liable to pay compensation or damages to the Petitioner for the same.
- (xli) Without prejudice to the aforesaid, assuming without admitting that the said incident was not planned along with the staff and it has happened on account of the negligence of the staff of the Respondent University, even then the Respondent University is liable for the same.

V. The Respondents have discriminated against the Petitioner on the basis of his sexual orientation and therefore violated Articles 14, 15, 16 and 21 of the Constitution of India.

- (xlii) Article 14 of the Constitution of India guarantees the right to equality and equal protection of laws to all persons.
- (xliii) Article 16 of the Constitution of India prohibit discrimination against a citizen on the ground of sex, generally and specifically in the context of employment by the State respectively.
- (xliv) It is an established position of law that the prohibition of discrimination on the ground of sex includes prohibition on the ground of sexual orientation and gender.
- (xlv) Article 15 prohibits discrimination inter alia on the ground of “sex” which has been interpreted to mean gender.
- (xlvi) The underlying tenet of the Constitution is that of inclusiveness [See *Naz Foundation v. Government of NCT, Delhi*, 2010 Cr. L.J 94].
- (xlvii) Section 8 of the Act also mandatorily provides that the Respondent University shall be open to all persons (including the teachers and taught) of either sex. The prohibition of discrimination on the ground of sex

includes prohibition of discrimination on the ground of one's gender.

- (xlviii) The notion of basic moral ethics must take into account diversity in sexual orientation, which is a part of the constitutional morality under Indian law, and not the whims and fancies of a certain group of people.
- (xlix) Articles 14 to 16 of the Constitution of India form a complete code with respect to equality and guarantee equality to all persons, irrespective of their sexual orientation, and prohibit discrimination on the ground of sexual orientation.
- (l) The impugned memos/orders bearing Nos. D/DE/894/0448 and D/DE/894/0449 dated 09.02.2010 and the impugned Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 along with the Article of Charge are all based on an alleged misconduct that is related to the Petitioner's sexual orientation and an act done in the privacy of the Petitioner's home.

The act done in the privacy of the Petitioner's home relating to his sexual orientation cannot by any stretch of imagination form the basis of misconduct.

- (li) In fact, the impugned memos/orders bearing Nos. D/DE/894/0448 and D/DE/894/0449 dated 09.02.2010 and the impugned Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 along with the Article of Charge set out at Annexures 13, 14, and 19 to the petition violate the Petitioner's right to equality and non-discrimination under Articles 14, 15 and 16 of the Constitution of India and his right to life under Article 21 of the Constitution of India.
- (lii) Therefore, the impugned orders/memos ought to be quashed and set aside.

VI. The Respondents have acted arbitrarily and illegally against the Petitioner and therefore violated Articles 14, 15 and 16 of the Constitution of India.

- (liii) Articles 14, 15 and 16 of the Constitution of India guarantees the right to equality and non-arbitrariness.

- (liv) It is an established position of law that arbitrariness in State action is the antithesis of equality.
- (lv) On 08.02.2010, the Petitioner's privacy was intruded upon by the said three media persons with the connivance of the Respondent University and / or its staff.
- (lvi) Based on a report dated 09.02.2010 by the Proctor, Professor M. Zubair Khan, and the Public Relations Officer, Dr. Rahat Abrar, the Respondent No. 2, in purported exercise of his power under Statute 40(3)(c), suspended the services of the Petitioner with immediate effect and also ordered that the Petitioner should vacate the said residential quarters.

Suspension with immediate effect is mala fide and arbitrary

- (lvii) Through an office memorandum dated 09.02.2010 bearing No. D/DE/894/0448 the Petitioner was informed by the Respondent No. 3 of his suspension with immediate effect. The said impugned office memorandum does not assign any reason for the exercise of such power by the Respondent No. 2.

- (lviii) The Respondent No. 2 has acted arbitrarily in suspending the services of the Petitioner.
- (lix) Therefore, the decision of the Respondent No. 2 placing the Petitioner under suspension with immediate effect, which was communicated to the Petitioner vide office memorandum bearing No. D/DE/894/0448 dated 09.02.2010, set out at Annexure “13” hereto ought to be quashed and set aside.

Order to vacate residential quarters is without authority of law

- (lx) Through a letter / memo dated 09.02.2010 bearing No. D/DE/894/0449, the Respondent No. 3 also informed the Petitioner of the Respondent No. 2's order that the Petitioner should vacate the residential quarters within one week of receipt of the letter.
- (lxi) There is no power vested in the Respondents to direct the Petitioner to vacate his staff/residential quarter on the basis of an order of suspension.

- (lxii) The order of the Respondent No. 2 directing the Petitioner to vacate the residential quarters is without authority of law.
- (lxiii) The letter/memo dated 09.02.2010 bearing No. D/DE/894/0449 issued by the Respondent No. 3 does not contain any reasons for the order directing the Petitioner to vacate the residential premises.
- (lxiv) The Respondent No. 2 has acted arbitrarily in directing the Petitioner to vacate the residential premises.
- (lxv) Assuming that the order directing to vacate Petitioner's residential quarters is based either on a contemplated disciplinary proceedings or on the alleged act of misconduct the impugned order directing the vacating of quarters is arbitrary in as much the same is not needed for the proper conduct of a disciplinary enquiry and it is otherwise based on hostility towards the Petitioner on account of his sexual orientation.
- (lxvi) Therefore, the decision of the Respondent No. 2 directing the Petitioner to vacate the said residential quarters, which was communicated to the Petitioner vide office memorandum bearing No. D/DE/894/0449

dated 09.02.2010, set out at Annexure 14 hereto, ought to be quashed and set aside, and the Petitioner ought to be reallocated possession of the said residential quarters.

Conclusion

(lxvii) Therefore, the impugned memos/orders bearing Nos. D/DE/894/0448 and D/DE/894/0449 dated 09.02.2010 and the impugned Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 along with the Article of Charge set out at Annexures 13, 14 and 19 to the petition, being arbitrary, illegal and without jurisdiction, violate Articles 14, 15 and 16 of the Constitution of India and therefore ought to be quashed and set aside.

VII. Memorandum dated 24.02.2010 and article of charge sheet is mala fide, baseless, illegal and arbitrary, violates Articles 14 to 16 of the Constitution of India and therefore ought to be quashed.

- (lxviii) The Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 proposing an inquiry under Statute 40(3)(c) of the Statutes of the University issued by the Respondent No. 3 and the Article of Charge are *mala fide* and baseless.
- (lxix) The Respondents have charged the Petitioner with absolutely false, baseless and frivolous allegations with the malicious intention of destroying the Petitioner's reputation.
- (lxx) The article of charge alleges that the Petitioner has committed act of misconduct "indulged himself into immoral sexual activity and in contravention of basic moral ethics," while residing in Quarter No. 21-C, Medical Colony, A.M.U., Aligarh thereby undermined pious image of the teacher community and as a whole tarnished the image of the university".
- (lxxi) Immoral sexual activity is not a stated/stipulated misconduct in the Statutes of the Respondent University.

(lxxii) In any event, the expression 'immoral sexual activity' and 'basic moral ethics' is undefined and is vague.

(lxxiii) It is an established position in law that acts *ex post facto* cannot be included as misconducts. As such, the Respondents' impugned action is baseless and completely without jurisdiction and/or without authority of law.

(lxxiv) The Article of Charge is otherwise completely arbitrary.

(lxxv) The article of charge is *mala fide* as the whole incident on which the charge is based was conducted with the connivance of the Respondent No. 1 and / or its staff and is based on the hostility of certain persons against the Petitioner on the basis of his sexual orientation.

(lxxvi) The acts alluded to in the Article of Charge were conducted in the privacy of the said residential quarters.

(lxxvii) The Petitioner's sexual orientation and acts based on that in private cannot be a justifiable cause of concern for anyone else.

(lxxviii) The Petitioner's sexual orientation and his sexual acts in the privacy of his home cannot undermine the image of the teacher community or the image of the Respondent University. The charge against the Petitioner is therefore baseless.

(lxxix) Admittedly the Article of Charge ex-facie does not disclose how the Petitioner professional work is adversely affected.

(lxxx) The impugned Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 along with the Article of Charge set out at Annexure 19 to the petition therefore violates Articles 14, 15 and 16 of the Constitution of India and ought to be quashed and set aside.

VIII. By restricting Petitioners movement, the Respondents have violated the Petitioner's fundamental right to freedom of movement under Article 19(1)(d).

(lxxxix) Article 19(1)(d) of the Constitution of India confers on citizens the right to move freely throughout the territory of India.

(lxxxii) Article 19(5) of the Constitution of India provides that the fundamental right to movement may be restricted only by law, which imposes reasonable restrictions in the interests of the general public or for the protection of interests of any Scheduled Tribe.

(lxxxiii) Through an office memorandum dated 09.02.2010 bearing No. D/DE/894/0448 set out, the Petitioner was informed by the Respondent No. 3 of the Respondent No. 2's direction that while the said order was in force, the Petitioner was not leave Aligarh without obtaining the prior permission of the Respondent No. 2.

(lxxxiv) The said office memorandum thus violates the fundamental right of the Petitioner to move freely throughout the territory of India.

(lxxxv) It is an established position in law that under clause (5) of Article 19, restriction can be placed on the freedom of movement of a citizen only by support of authority of statutory law.

- (lxxxvi) There is no statutory law that permits the Respondent University to restrict the freedom of movement of its staff outside the University campus.
- (lxxxvii) The said restriction on the Petitioner's fundamental right to move freely throughout the territory of India is without authority of law and therefore without jurisdiction.
- (lxxxviii) The said restriction issued in the impugned Office Memorandum is also not aimed in the interests of the general public or for the protection of interests of any Scheduled Tribe and is therefore not saved by clause (5) of Article 19.
- (lxxxix) The Respondent Nos. 1, 2 and 3 have therefore violated the fundamental right of the Petitioner to move freely throughout the territory of India.
- (xc) Therefore, office memorandum dated 09.02.2010 bearing No. D/DE/894/0448 to the extent that it restricts the Petitioner's movement outside Aligarh and requires the Petitioner to obtain prior permission of the Respondent No. 2 to do so, violates Article 19(1)(d) of

the Constitution of India and ought to be quashed and set aside.

IX. The Petitioner's right to dignity under Article 21 of the Constitution of India has been violated.

- (xci) The right to dignity is inherent in Article 21 of the Constitution of India.
- (xcii) The intrusion into the Petitioner's privacy by the said three media persons with the connivance of the Respondent University and /or its staff and consequent actions by the Respondents has subjected the Petitioner to humiliating and degrading treatment and has impaired the Petitioner's dignity.
- (xciii) The Petitioner's dignity was injured by the humiliation and indignities he was forcibly subjected to by the said three media persons. All this happened on account of tacit or active connivance of the Respondent University staff and/or negligence on the part of the Respondent University and its staff.
- (xciv) The subsequent actions of the Respondent Nos. 1 to 3 in suspending the services of the Petitioner, placing restrictions on his movement, directing him to vacate

the residential quarters and issuance of the charge sheet have further caused immense trauma and mental agony to the Petitioner and have further injured the Petitioner's sense of self-worth and dignity.

(xcv) The Petitioner has been subjected to public ridicule, scorn and contempt on account of the actions of the Respondents and their allegations, thereby causing him immense hardships and injuring his dignity.

(xcvi) The Petitioner was also further forced to vacate an alternate accommodation he had found for himself on account of the public disclosure of the incident.

(xcvii) The actions of the Respondents have thus been responsible for violating the fundamental right to dignity of the Petitioner and the Respondents are jointly and severally liable to pay compensation or damages to the Petitioner for the same.

45. For reasons set out in the accompanying Stay Application, the impugned orders/memos/actions should be stayed and interim reliefs prayed for be granted

PRAYER

The Petitioner therefore prays:-

- a. for an appropriate writ, order or direction calling for the records of the case and after going through the same quash and set aside:
 - (i) the decision of the Respondents suspending the Petitioner from service with immediate effect and restricting the Petitioner's movements outside Aligarh, communicated to him through Office memo No. D/DE/894/0448 dated 09.02.2010, Annexure "13" hereto;
 - (ii) the decision of the Respondents directing the Petitioner to vacate the staff quarter situated at Quarter No. C-21, Medical Colony Campus, A.M.U, Aligarh communicated to him through Office Memo No. D/DE/894/0449 dated 9.02.2010, Annexure "14" hereto;
 - (iii) Memorandum bearing No. D/DE/894/0467 dated 24.02.2010 along with the Article of Charge, Annexure "19" hereto, proposing an inquiry under

Statute 40(3)(c) of the Statutes of the Respondent University, against the Petitioner for his alleged misconduct;

- b. for an appropriate writ, order or direction to the Respondents directing them to consider the Petitioner for appointment to the post of Professor and restraining them from proceeding with any meeting of the Selection Committee and taking or implementing any decision of the Selection Committee with respect to the appointment of any person to the post of Professor in the Respondent University's Department of Modern Indian Languages without considering the Petitioner's eligibility for the same or during the pendency of the impugned disciplinary proceedings against the Petitioner;
- c. for an appropriate writ, order or direction directing the Respondents to destroy the originals and all copies of the video clippings and/or the photographs of the said incident that occurred on 08.02.2010 which are in possession of the Respondents and restraining them from publication of the video clippings and / or photographs, or any part thereof;

- d. for an order directing the Respondents to pay the Petitioner as sum of Rs. 30,00,000/- (Rupees thirty lakhs) as compensation or damages;
- e. for costs of this Petition;
- f. for such further and other orders as the circumstances of the case may require and the Hon'ble Court may deem fit.

Petition drawn by:

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Petition settled by

Anand Grover, Advocate

Petitioner

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