
(1982) 11 MAD CK 0070

In the Madras High Court

Case No : Writ Petition No. 6594 of 1981

C.P. Mathew

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 05-11-1982

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 311

Citation : (1984) ILR (Mad) 15 : (1983) 1 LLJ 84

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Judgement

1. The petitioner joined the services of the second respondent, Hindustan Photo Films Manufacturing Co. Ltd. (for short the Management) as early as in 1961 as a Technical officer. In 1976 he was promoted as Works Manager. He was in charge of the two factories of the Management, one at Ooty and the other at Ambattur. On 27.10.1980 the Management informed the petitioner that his services stood terminated under Clause 13.1 of the Hindustan Photo Films Services Rules for Officers (for short Service Rules). A Cheque for Rs. 5,000 being two months basic salary was enclosed. Against the said order the petitioner preferred an appeal before the Board of Directors on 29-12-1980. The Appeal was rejected by the Board on 10-4-1981. It is, in these circumstances, the petitioner has filed this writ petition to quash the order passed by the Management terminating his services.

2. The communication dated 27.10.1980 states : "Pursuant to the resolution of the Board of Directors dated 25th October, 1980 and the terms of clause 13.1 of the Hindustan Photo Films Service Rules for officers, you are hereby notified that your services are terminated with immediate effect and as required by the said Rules, a cheque for Rs. 5,000 representing two months basic pay in lieu of notice is enclosed.

3. Before I deal with the contentions raised by Mr. B. R. Dolia on behalf of the petitioner and the learned Solicitor General for the Management, it is necessary

to refer to the relevant provisions of the service Rules. The rules apply to all officers of the company who are in the pay scales of Rs. 450 - 800, Rs. 400 - 950 and above. The service Rules deal with recruitment, probation, promotion, fixation of pay on promotion, verification of date of birth, disqualification for appointment, training and development, performance appraisal and increments, crucial date of increments, transfer, deputation of Officers to other organisations, superannuation, termination of employment, contributory provident fund, leave entitlement, other amenities and gratuity In this context the relevant rules to which reference was made at the time of argument may be referred to Rule 9 of the Service Rules reads thus :

"9. Performance appraisal and increments :

9.1 Increments shall be granted by the Management to an Officer on the basis of performance which will be reviewed once in a year in accordance with the performance appraisal system of the company. Increments will not be automatic, but based on the performance appraisal review and the recommendations of the appropriate promotion committee referred to in paras 4.2.1 and 4.2.2. In the event of an Officer being found unsuitable for continuation in the Company's services based on the appraisal of his performance, he is liable to be terminated from the services of the Company after giving due notice as stated in para 13.1

Rule 12 of the Service Rules reads thus :

"12. Superannuation - Retirement.

12.1 Every Officer appointed to the services of the Company shall retire when he completes the age of 58 years on the last day of the month in which he completes 58 years.

....."

Rules 13. of the Service Rules states :

"13. Termination of employment

13.1 In the case of termination - resignation of the services of an Officer, notice shall be given by either party for the period shown below or payment of basic pay shall be made for the period in lieu of notice :

(1) In the case of permanent employees 2 months

(2) In the case of Officers on probation and under-training" 1 months

No notice will be required in any case for termination of employment on attaining the age of superannuation, viz., 58 years of age.

13.2 The pay and allowance or any other amounts due to an officer leaving the services of the company without giving proper notice or without his resignation being accepted shall be liable for forfeiture in whole or in part as the Company may decide.

4. The Management has also framed Conduct, Discipline and Appeal Rules for officers and Supervisors (for short Conduct Rules). Rule 5 of the Conduct Rules states that without prejudice to the generality of the term "misconduct" the following acts of omission and commission shall be treated as misconduct. As many as 24 items are mentioned therein. The note to the rule states that the said instances of misconduct are illustrative in nature and not exhaustive. Rule 20 of the Conduct Rules provides for suspension of an Officer/Supervisor where a disciplinary proceeding against him is contemplated or is pending or where a case against him in respect of any criminal offence is under investigation or trial. Rule 23 provides for penalties that might be imposed on the Officer/Supervisor for misconduct committed by him or for any other good and sufficient reasons. The penalties are divided into two categories, viz. minor penalties and major penalties. Minor penalties are such as censure, withholding of increments of pay with or without cumulative effect, withholding of promotion and recovery from pay or such other amount as may be due to him of the whole or part of the pecuniary loss caused to the company by negligence or breach of orders. Major penalties refer to reduction to a lower grade or post or to a lower stage in a time scale; removal from service which shall not be a disqualification for future employment, i.e., termination and dismissal. Explanation to Rule 23 refers to certain acts which will not amount to a penalty within the meaning of the Conduct Rules. Clause (vi) of the Explanation to Rule 23 of the Conduct Rules reads thus :

"vi. Termination of Service :

- (a) of an Officer/Supervisor appointed on probation during or at the end of period of probation, in accordance with the terms of his appointment;
- (b) of an Officer/Supervisor appointed in a temporary capacity, otherwise than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;
- (c) of an officer/Supervisor appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and
- (d) of any Officer/Supervisor on reduction of establishment based on first come last go principle;

Rules 24 states thus :

"The disciplinary authority, as specified in the schedule, or any authority higher than it may impose and of the penalties specified in Rule 23 on any officer/Supervisor :

Rules 25 deals with the procedure for imposing major penalties : It runs thus :

"25. (1) No order imposing any of the major penalties specified in Clauses (e) (f) and (g) of Rules 23 shall be made except after an inquiry is held in accordance with this rule."

The details of the manner in which the enquiry has to be held are contained in Sub-Rules (2) to (19) of Rules 25. Rule 26 deals with action on the inquiry report. Rule 27 contains the procedure for imposing minor penalties. Rule 32(i) states that Officer/Supervisor may appeal against an order imposing upon him any of the penalties specified in Rule 23 or against the order to suspension referred to in Rule 20. Rule 33 deals with the power of review. Rule 36.5 deals with the continuation of the disciplinary proceedings which might be instituted against an Officer/Supervisor before his date of superannuation, even after his date of retirement. Rule 36.6 empowers the appointing authority to institute a departmental proceeding against a retired employee in respect of any event which took place not more than four years before such institution. The Schedule to the Conduct Rules prescribed the appointing authority, disciplinary authority/competent authority and appellate authority in respect of various grades of officers.

5. I may at the very outset that he learned Solicitor General appearing for the Management did not contest the position that a Writ Petition would be maintainable against the Hindustan Photo Films Manufacturing an agency or an instrumentality of the State.

6. Mr. Dolia, raised the following contentions : (1) An element of public employments is involved in the service of the petitioner with the Management. In the circumstances, though the employment of the petitioner with the Management originated in a contract, subsequently the petitioner obtained a statutory status. Consequently, it will be open to this Court in exercise of its powers under Art. 226 of the Constitution of India to give a declaration that he continued to be in the employment of the Management if it was found that the termination of the services of the petitioner was in violation of the principles of natural justice and contrary to the service regulations. The relationship of the petitioner and the Management could not be considered thereof as one of master and servant, (2) The order of termination in the instant case was passed by merely giving two months notice. Under Rule 9.1 of the Service Rules an Officer would be entitled to increments on the basis of the performance to be reviewed once in a year in accordance with the performance appraisal system. According to the said rule, in the event of an office being found unsuitable for continuation in the Company's Services based on the appraisal of his performance, he is liable to be terminated from the services of the Company after giving due notice as stand in Rule 13.1 of the Service Rules. Rule 13.1 which provides for two months notice being given in the case of permanent employees and one months in the case of officers on probation and under-training must be read subject to Rule 9.1 of the service Rule. Rule 13.1 would be attracted only when an Officer is found unsuitable on the appraisal of his performance. Further, the Management ought to have conducted an enquiry on the question whether the petitioner was unsuitable for continuation in the service of the Management. The failure to do so amounted to a violation of the principles of natural justice. This would be particularly so because the petitioner has a right to continue in service till the

date of his superannuation, (3) In view of the fact that the order of termination, was passed without conforming to the principles of natural justice, the order was arbitrary, mala fide in law and based on no appraisal of performance, especially when there was sufficient evidence to show that the petitioner had been rated well in respect of his duties by the Management, (4) Rule 13.1 is liable to be struck down on the ground that it confers an arbitrary power on the Management and that it is violative of Art. 14 of the Constitution of India, (5) In any event, the order of termination has cast a stigma on the petitioner and consequently is punitive in character, though it is worded innocuously. In the circumstances, the order is vitiated by a failure to conform to the principles of natural justice.

7. The learned Solicitor General, however, contended that the relationship between the Management and the petitioner is that of master and servant pure and simple. The Rules are not statutory. The management, though amenable to the jurisdiction of the Court under Art. 226 of the Constitution of India, in the sense that it is an instrumentality or agency of the Government. Consequently, the petitioner cannot have the status of a civil servant and, therefore, Art. 311 of the Constitution of India would stand excluded. If that be so, then the relationship between the petitioner and the Management must be considered to be purely contractual. In such a situation, Art. 14 of the Constitution of India would not be attracted. The Supreme Court has held that Art. 14 would apply in the case of contracts only at the threshold when the Government grants a contract and once a contract is entered into the relationship between the parties must be dealt with according to the terms of the contract. Rule 13.1 of the Service Rules cannot, therefore, be said to be violative of the Constitution of India. Further, the learned Solicitor General argued that Rule 13.1, is not dependent on Rule 9.1. Under Rule 13.1 the Management has got an independent power to terminate the service of an officer by giving two months notice or salary for the said period in lieu of notice. The contention of the petitioner that the order of termination cast a stigma and is punitive in character and, therefore, violative of the principles of natural justice cannot be sustained. The order on the face of it shows that no stigma is cast on the petitioner. There are no averments regarding mala fides, in the affidavit. The provision regarding the penalties contained in Rule 23 of the conduct Rules could not be attracted to the facts of this case. The petitioner's service has been terminated because he was found on an appraisal of his performance that he was unsuitable to be continued in the service of the Management.

8. On the basis of the contentions urged before me by the learned counsel for the petitioner and by the learned Solicitor General on behalf of the Management, the following points arise for determination : (1) Whether the relationship between the Management and the petitioner is that of master and servant or whether an element of public employment is involved, (2) Whether Rule 13.1 of the Service Rules confers an unfettered power on the Management to terminate the services of the petitioner by giving two months notice or salary in lieu thereof or whether the powers conferred on the Management under Rule 13.1 can be

exercised only if the conditions in Rule 9.1 are satisfied, (3) Assuming that Rule 13.1 confers an independent power on the Management to terminate the service of an officer by giving two months notice or salary in lieu of notice, whether Rule 13.1 is arbitrary and violate of Art. 14 of the Constitution of India, (4) Whether the order of termination of the service of the petitioner is vitiated by mala fides, (5) Whether the order of termination of the services of the petitioner is punitive in character and is violative of the principles of natural justice.

9. As I have already stated, it is not disputed by the learned Solicitor General that the Management is a State within the meaning of Art. 12 of the Constitution of India inasmuch as it is and agency or instrumentality of the State. The fact that the Management is a State within the meaning of Art. 12 of the Constitution of India does not however, make it a department of the Government, as contended by the learned Solicitor General. In *State of Punjab v. Raja Ram* AIR 1981 S.C. 1994 the Supreme Court was concerned with the question whether the Food Corporation of India is a department of the Government. The Supreme Court answered the question in the negative. There, the Supreme Court came to the conclusion that the Food Corporation of India was an agency or instrumentality of the Central Government. However, The Supreme Court observed thus :

"Even the conclusion, however, that the Corporation is an Agency or instrumentality of the Central Government does not lead to the further inference that the Corporation is a Government Department. The reason is that the F.C. Act has given the Corporation an individuality apart from that of the Government. In any case, the Corporation cannot be divested of its character as a "company" within the meaning of the definition in Clause (e) of S. 3 of the L.A. Act, for it completely fulfills the requirements of that Clause, as held by above."

The same principles apply to the Management in this case which is the Hindustan Photo Films Manufacturing Company Ltd. The Management is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name. It has an individuality part from that of the Government. From this it can only follow that an officer of the Management cannot have the status of a civil servant and the protection of Art. 311 of the Constitution of India. But the question that still remains to be considered is whether there is an element of public employment in the service of the petitioner. When once it is conceded that the Management is a State within the meaning of Art. 12 of the Constitution of India, then part III of the Constitution of India would be attracted. The question will then arise whether there is an element of public employment involved in the case of the petitioner's services with the Management. In *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, ,* the question arose whether the Oil and Natural Gas Commission, the Life Insurance Corporation of India and the

Industrial Finance Corporation would be "authorities" under Art. 12 of the Constitution of India and whether its employees would be entitled to the protection of Arts. 14 and 16 of the Constitution of India. Ray, C.J., on behalf of Chandrachud and Gupta, JJ. and on his own behalf held that the said bodies were authorities within the meaning of Art. 12. of the Constitution of India and that the Rules and Regulations framed by these bodies had the force of law. They further held that the employees of these statutory bodies had a statutory status and they were entitled to a declaration of being in employment when their dismissal or removal was in contravention of statutory provisions, though they were not servants of the Union or the State. Mathew, J., in his Separate but concurring judgment also held that the said Corporations were State within the meaning of Art. 12 of the Constitution of India and that the regulations framed by the said Corporations had the force of law. The learned Judge observed as follows :

"Even assuming that the regulations have no of law, I think since the employment under these Corporations is public employment, an employee would get a status which would enable him to obtain declaration for continuance in service if he was dismissed or discharged contrary to the regulations".

After discussing the original concept of employment under the laws of master and servant and the observations of Lord Wilberforce in *Mallech v. Aberdeen Corporation* 1971 I WLR 1578 the learned Judge observed thus :

"I think that employment under public corporations of the nature under consideration here is public employment and, therefore, the employee should have the protection which appertains to public employment."

The learned Judge then referred to the observation of Lord Evershed in *McClelland v. Northern Ireland Health Board* 1957 All E.R. 129 and observed as follows :

"And he also pointed out that the position of the employer board and one of its servants is very different : (The loss or damage to the board occasioned by the departure of one of its servants would, save in very exceptional circumstances, be negligible. To a servant, certainly a servant in the position of the appellant, the security of employment with the Board for the period of working life is of immense value). This approach to public employment goes some way towards the reversal of the common law position. In public employment where there is an appointment to a permanent post, there should be presumption that the employee cannot be given notice and the servant can only be dismissed for misconduct or specified reasons."

The learned Judge then referred to the observations of Lord Stendale, M. R. in *Hanson v. Radcliffe*, U. D. C. 1922 2 Ch. 490 and again observed thus :

"That apart, the regulations framed by these. Corporations were intended to be binding upon them and were the bases on which the employment were made. As

the employments were under Corporation created by status for carrying on business of public importance, they were public employment. And even if the regulations have not got the force of law, I think the principle laid down by Justice Frank further in *Vitarelli v. Seaton*, 359 U.S. 535, should be given the situation : He said.

An executive Agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such Agency, that procedure must be scrupulously observed This judicially evolved Rule of administrative law is now firmly established, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

In *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, , the question arose whether the U.P. Warehousing Corporation was an Agency or instrumentality of the Government, whether its employee had any statutory status and whether he could invoke the principles of natural justice. The Supreme Court held that the U.P. Warehousing Corporation was a State within the meaning of Art. 12 of the Constitution of India and the ratio in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, , would apply to the facts of that case. Sarkaria, J., observed thus :

"Even it at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and the employer, the statutory body, could not terminate the services of its employee without the due enquiry in accordance with the statutory regulations, if any, in force, or in the absence of such regulations, in accordance with the rules of natural justice."

The learned Judge after referring to the decision of the House of Lords in *Melloch v. Aberdeen Corporation* 1971 I WLR. 1578 and the decision of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, observed thus :

"We do not think it necessary to burden this judgment by a detailed discussion of these cases because in the instant case, all the material factors exist which show beyond doubt that the Uttar Pradesh State Warehousing Corporation constituted under the Act 58 of 1956, is an Agency or instrumentality of the Government, and the relationship between the Corporations and its employees is not purely that of master and servant founded only on contract. Indeed it was not seriously disputed that the respondent is in public employment and the Corporation is an authority within the meaning of Art. 12 of the Constitution."

Chinnappa Reddi, J.

in his concurring judgment observed as follows :

"I find it very hard indeed to discover any distinction on principle between a person directly under the employment of the Government and a person under the employment of an Agency or instrumentality of the Government or a Corporation set up under a statute or incorporated but wholly owned by the Government".....

In a country like ours which teems with population, where the State, its Agencies, its instrumentalities and the Corporations are the biggest employers and where millions seek employment and security, to confine the applicability of the equity clauses of the Constitution, in relation to matters of employment, strictly to direct employment under government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a court to enforce a contract of employment and denies him the protection of Arts. 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees in the public sector often discharge as enormous duties as civil servants and particularly participate in activities vital to our country economy. In growing realisation of the importance of employment in the public sector, Parliament and Legislatures of the States have declared persons in the service of local authorities, Government Companies and statutory corporations as public servants and extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants. I agree with what has been said by my brother Sarkaria J., I have added a few lines to emphasise the problem."

In *A. R. Joshi v. State Bank of India*, (1981) L.I.C. 1012, it was held by the Delhi High Court thus :

"The State Bank of India having been constituted under the Act is a statutory body. The power to employ officers and others exercisable by the Bank is a statutory power. Therefore, the employment of the employees of the Bank is a statutory employment. Therefore, when an employee is charged with misconduct and disciplinary proceeding are held against him by the Bank Authorities the employee is entitled to invoke the principles of natural justice."

10. The question whether the Bharat Earth Movers Ltd., Hindustan Machines Tools Ltd., and Karnataka Agro Industries Corporation Limited fell within the meaning of the word State as defined in Art. 12 of the Constitution of India and its employee would be entitled to the protection of Arts. 14 and 16 of the Constitution, arose for consideration before Rama Jois, J., in *T. S. Srinivasa Murthy v. Bharat Earth Movers Ltd.*, 1982 I L.L.J. 868 . The learned Judge came to the conclusion that those bodies are State. The learned Judge then posed the question whether the relationship between the employees of the various Corporations and the Corporations was contractual or one of status. The learned Judge after referring to the decision of the Supreme Court in *Sukhdev v.*

Bhagatram (supra) and U. P. Warehousing Corporation v. Vijay Narayan Vajpayee (supra) observed thus :

"Therefore, in my view, except in the case of special post which forms a class by itself in respect of which a Government Company or a statutory Corporation may enter into a specific contract of service on special terms and conditions having regard to its nature of duties and duration, in respect of persons appointed to its regular service and posts, the conditions of service of persons appointed to such posts have to be governed by the rules which may be framed and altered unilaterally by each of the companies having due regard to the exigencies of public employment and applied to its employees, which of course must conform to the fundamental rights Therefore, except those appointed on contract basis to any special post for a specified period, the relationship between all other appointed on its regular establishments is one of status and not contract. The Companies and the Bank being State for purpose of Part III in regulating the recruitment and conditions of service of persons appointed to their services must conform to Art. 14 and a specific fact of it incorporated in Art. 16".

The learned Judge ultimately observed thus :

"For the above reasons, I hold that the employment under the Government Companies and the Bank is public employment and not private. The relationship between these bodies and their employees is essentially one of status though its origin is in contract."

In C. I. W. Transport Corporation v. P. Sen 86 Cal W N 609 a Bench of the Calcutta High court was called upon to decide whether the Central Inland Water Transport Corporation Limited was a State within the meaning of Art. 12 of the Constitution of India and whether the Joint Financial Adviser and the Chief Accounts Officer of the Corporation was entitled to file a writ petition challenging his dismissal from service or he was only entitled to file a suit for damages. The Bench following the decision of the Supreme Court in Sukhdev Singh v. Bhagatram (supra), U. P. Warehousing Corporation v. Vijay Narayan Vajpayee (supra) and Som Prakash v. Union of India : (1981)ILLJ79SC , held that the Corporation was an agency or instrumentality of the Central Government and was an authority and therefore a State within the meaning of Art. 12 of the Constitution. The learned Judge further held that in a case where the company is an authority and, therefore, a State within the meaning of Art. 12 of the Constitution in a matter of dispute between the company and the officers, the company must follow the rules of natural justice and must act fairly and justly.

In R.M. Joshi and others Vs. Reserve Bank of India, a Full Bench of the Delhi High Court was called upon to answer two questions, viz, whether the Reserve Bank of India Staff Regulations were not statutory in character and were contractual and whether the employees could maintain a Writ Petition on the ground that they had a right to equality under the Constitution or any other

constitutional rights. The Full Bench speaking through Deshpande, C.J., opined that the Staff Regulations of the Reserve Bank of India were not statutory and were promulgated in exercise of executive power. However, the learned Chief Justice on behalf of the Full Bench held that the Writ Petition would be maintainable. The learned Chief Justice in this context observed as follows :

"The mere fact, however, that the staff Regulations are not statutory does not always mean that any attempt to enforce them would be based on a contract and as such the proper subject-matter of a suit and not of a writ petition under Art. 226 of the Constitution. The reason is that a standardized contract of service with the State or a public authority by a large class of employees stands on a different footing from an ordinary contract between two individual or even a contract by an individual with the Government. The State and the public authority are not free like an ordinary employer to deal with such a standardized class of their employees. They are under constitutional and statutory obligations. It is these fetters on the powers of the employer that give a status other than contractual to the employees of the State or a public authority. If, therefore, depends on the nature of the rights sought to be enforced by the employees of the State or public authority, whether the particular right is contractual or statutory or constitutional."

After referring to a number of decisions the learned Chief Justice observed as follows :

"The reason is that those executive instructions are regarded not merely as conditions of service contract, but rather the incidents of status of public servants. If constitutional rights are claimed by the petitioners, the contractual origin of these conditions of service will not come in the way ... For instance the right of equality guaranteed by Arts. 14 and 16 of the Constitution will prevent the authority which is the State under Art. 12 of the Constitution from contravening the said fundamental right. It will not then matter that the conditions of service are contractual. The State in dealing with different classes of its employees cannot say that is not bound by the fundamental rights of its employees merely because the employment originates in a contract and may be governed by conditions of service which are in the form of a contract. The question whether a servant of the State or of statutory authority can enforce his right against the employer under Art. 226 depends upon whether his right is based not only on contract but also on the Constitution or a statute. Once he is able to show that either a statutory or constitutional provision is contravened by the State he would be able to maintain the Writ Petition under Art. 226 of the Constitution and would be granted relief thereunder. On the otherhand if no constitutional or statute protection is enjoyed by him, then his right would remain merely contractual and it cannot be enforced under Art. 226 of the Constitution. Our answer to the reference, therefore, is that while the Reserve Bank of India Staff Regulations are not statutory in character and are contractual, the question whether the writ petitions are maintainable would

depend on whether the petitioners have the right to equality under the Constitution or any other constitutional rights and whether any such right is contravened by the action of the Bank."

11. The following principles, therefore, emerge from above decisions. The employees of public corporations or Companies which fall within the definition of the word "State" under Art. 12 of the Constitutional of India do not have the status of a civil servant. However, the relationship between such employer and the employees is not purely that of master and servant, though the relationship might have originated in contract. An element of public employment is necessarily involved in the relationship. In other words the relationship is one of status. That being so, the employees would be entitled to the protection of Art. 14 and 16 of the Constitution of India, though not Art. 311 of the Constitution. Since the employment under the corporation is public employment, an employee would get a status which would enable him to obtain declaration for continuance of service if he is dismissed or discharged contrary to the service regulations.

12. Further, even if the service regulations have not got the force of law, the Corporation is bound to act according to its own rules and standards by which it professes its action to be judged on the principle laid down by Justice Frankfurter in *Vitarelli v. Seaton*, 359 U.S. 535, that he takes the procedural sword shall perish with that sword. I, therefore, find that even though the relationship between the Management and the petitioner originated in a contract an element of public employment is involved in the service of the petitioner with the Management and the petitioner has acquired a status and that the relationship between the Management and the petitioner is not that of a master and servant as contended by the learned Solicitor General.

13. An answer to the Second Point will depend upon an interpretation of the scheme of Service Rules and also the language of Rules 9.1 and 13.1. Under Rule 12.1 every officer appointed to the services of the Company shall retire when he completes the age of 58 years on the last day of the month in which he completes 58 year. This clause therefore confers on the officers of the Management the right of security of tenure till they complete the age of 58 years. This right to be in the service of the Management till an officer completes 58 years of age is a very valuable right which is of immense value to the officer concerned. Rule 9.1 deals with performance appraisal and increment. The rule has already been extracted. It states that increments shall be granted by the Management to an officer on the basis of performance which will be reviewed once in a year in accordance with the performance appraisal system of the company. Increments will not be automatic but will be based on the performance appraisal review and the recommendations of the appropriate promotion committee referred to in Rules 4.2.1. and 4.2.2. Rule 4.2.1. states that in the case of promotion of officer to the grade of Rs. 1,300 - 1,600 and above, the promotion committee would be constituted by the Board of Directors. Rule 4.2.2. states that in the case of all other categories of officers the promotion committee

would be constituted by the Managing Directors. Rule 4.3 state that any person who feels aggrieved on account of his non-promotion may appeal to Management, whose decision will be final. Rule 9.1 further states that in the event of an officer being found unsuitable for continuation in the company's services based on the appraisal of his performance, he is liable to be terminated from the service of the Company after giving due notice as stated in Rule 13.1. Rule 13.1 states : "In the case of termination/registration of the services of an officer, notice shall be given by either party, for the period shown below or payment of basic pay shall be made for the period in lieu of notice : (1) in the case of permanent employees - two months and (2) in the case of officers on probation and under training - one month. No notice will be required in any case for termination of employment on attaining the age of superannuation, viz., 58 years of age. On a reading of Rules 9.1 and 13.1 I am of the opinion that Rule 13.1 is dependent on Rule 9.1 so far as termination of the services of an officer is concerned. Rule 13.1 by itself does not confer a power on the Management to terminate the services of an officer by giving notice as prescribed therein or on payment of basic pay for the period in lieu of notice. It merely states that in the case of termination, notice shall be given for the period of two months in the case of permanent employees and one month in the case of officers on probation and under training. As is seen already, Rule 9.1 confers the power on the officer, if he is found unsuitable for continuation in the company's services, based on the performance appraisal system and that in such an event, the Management should give due notice as stated in Rule 13.1. On a reading of the two rules together, the termination of the services of an officer referred to in Rule 13.1 can only have a reference to the termination of the services of an officer who is found unsuitable for continuation in the company's services based on the appraisal of his performance, in terms of Rule 9.1. If Rule 13.1 is intended to confer on the Management an independent power to terminate the service of an officer by giving the prescribed notice without reference to Rule 9.1, the Rule would have been worded differently. This is further strengthened by the subsequent clause in Rule 13.1 which clearly states that no notice would be required in any case for termination of employment on attaining the age of superannuation, viz., 58 years of age. Further, this interpretation, viz., that the termination referred to in Rule 13.1 is only a termination contemplated under Rule 9.1 when an officer is found unsuitable for continuation in the company's service is consistent with Rule 12.1 which states that an officer will be entitled to continue in office till he completes the age of 58 years. Further, the Conduct Rules provide for an officer being proceeded against for various acts of misconduct. Rule 23 deals with penalties which may be imposed on an officer for misconduct committed by him or for any other good and sufficient reason. The rule shows that he minor and major penalties referred to therein may be impose on an officer not only for misconduct committed by him but also for any other good and sufficient reason. The explanation to Rule 23 states that certain acts shall not amount to a penalty within the meaning of that Rule. Explanation (vi) thereof deals with termination of service. I have already extracted clauses (a) to (d) of explanation (vi). There

is no reference to the termination of the services of an officer by merely giving the prescribed notice under Rule 13.1. The view I have taken is consistent with the law of public employment. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* (supra) Mathew, J. has referred to *Mc. Clelland v. Northern Ireland Health Board*, 1957 II All E.R. 129 in which the House of Lords by a majority decided that express term which provided for dismissal in case of misconduct and inefficiency was exhaustive of the grounds of dismissal and, therefore, no further terms as to notice could be implied. The learned Judge has also extracted the following passages of Lord Evershed :

"Much may turn on the premises to a consideration of the meaning of the conditions - whether in a contract of service made in the 20th Century with a statutory board such as the respondent board (whose established officers participate in the pension scheme contained in regulations promulgated by the Ministry of Health and Local Government of Northern Ireland), it is correct to regard the common law right of a master to determine his servant's engagement as of so well-established and paramount character that the contract should be interpreted as necessarily subject to that right (and to corresponding right on the part of the servant) so that only the clearest term will exclude it The loss or damage to the Board occasioned by the departure of one of its servants would, save in very exceptional circumstances, be negligible. To a servant, certainly a servant in the position of the appellant, the security of employment with the Board for the period of working life is of immense value."

Mathew, J.

then observed thus :

"This approach to public employment goes some way towards the reversal of the common law position. In public employment where there is an appointment to a permanent post, there should be presumption the employee cannot be given notice and the servant can only be dismissed for misconduct or specified reasons."

In 1967 Volume 30 The Modern Law Review G. Ganz in an illuminating article has observed thus at page 296 :

"In public employment where there is an appointment to a permanent post, especially when pensionable, there should be a presumption that the employees cannot be given notice and that the servant can only be dismissed for misconduct or for specified reasons. It is the dicta rather than the ratio of *Mc. Clelland*'s case which give support to this approach."

The learned Solicitor General made a pointed reference to the fact that rule 13.1 refers to termination of service by Management as well as resignation by an officer. Consequently, it must be deemed to confer an independent power on the part of the Management to terminate the services of the Officer by giving a prescribes notice or salary in lieu of notice. Any other interpretation would offend

the Rule of reciprocity. This argument of the learned Solicitor General does not appeal to me. The reason is that Rule 13.1 does not confer an absolute power on an officer to determine his service unilaterally by tendering a letter of resignation. Rule 13.2 contemplates a resignation by an officer being accepted by the Management. It states that the pay and allowances or any other amounts due to an officer leaving the services of the company without giving proper notice or without his resignation being accepted shall be liable for forfeiture in whole or in part as the company may decide. In other words unless the Management accepts the letter of resignation of an officer, the officer would forfeit his pay and allowances and other amounts due to him either in whole or in part as the management may decide. This Rule 13.2 is also in consonance with the principles of law. In *Cochin Port S. C. S. Association v. H. & C. Ltd.*, 1982 II L.L.J. 141, the question arose whether even under the ordinary law of master and servant governed by the principles of contract, a mere submission of a letter of resignation by an employee without it being accepted by an employee without it being accepted by the employer would determine the contract of service. M. P. Menon, J. held that the effect of resignation, understood in the light of the first principles of contract law, is that it is no more than a refusal by the employee to perform his part of the contract, giving the employer thereby the right to determine it. Without anything more it has not the capacity by itself to put an end to the contract. However, the learned Judge took care to observe that in the case of resignation which remains unaccepted the employee cannot be deemed to be in service for months or years together; after the lapse of a reasonable period of notice the contract would be deemed to have come to an end, whether the resignation is accepted or not. The learned Judge also observed that the rule was the same both in public and private employment.

14. A similar question arose for consideration in *Hukumat Rai v. State (L)* (1982) G.L.R. 641. Under Rule 33-A of the 1974, a Government servant can resign by giving a notice of one month to the appointing authority. The appointing authority was the Government. But the civil servant who was a medical officer in Gujarat Public Health Service addressed the letter of resignation to the director of Health Services. Since he did not deposit one month's wages inclusive of allowance in lieu of notice as required by Rule 33-A his resignation letter was not forwarded to the Government by the Director of Health Services. In the meantime, he withdrew the letter of resignation, on 18th January, 1977. The appointing authority received the letter of resignation for the first time only on 20th January, 1977. It is in this context the question arose whether by virtue of rule 33-A the resignation had become effect on the expiry of the period of notice. The learned Judge held following the decision of the Supreme Court in *Raj Kumar Vs. Union of India (UOI)*, , that as the resignation was withdrawn before it was actually received by the appointing authority who alone could accept or reject the resignation or permit it to become effective by efflux of time, there was no merit in the contention that the resignation once dispatched could not be withdrawn.

15. Some support can be derived from Rules 36.5 and 36.6 of the Conduct Rules

to come to the conclusion that under Rule 13.2 of the service Rules the resignation has to be accepted. Rules 36.5 and 36.6 of the Conduct Rules confers power on the appointing authority to continue disciplinary proceedings or institute departmental proceedings against an officer even after his retirement. Rule 36.5 states "Notwithstanding anything contained in these rules it shall be competent to the appointing authority to continue any disciplinary proceedings which may be instituted against any officer before his date of retirement. In such an event, it shall also be competent to the appointing authority to withhold any payment of the retirement benefits the officer concerned. Rule 36.6 states : It shall also be competent to the appointing authority to institute a departmental proceedings against a retired employees in respect of any event which took place not more than four years before such institution. Therefore, it is not possible to accept the argument of the learned Solicitor General that under Rule 13.1 an Officer will have a right to unilaterally determine his service by submitting a letter of resignation. Even otherwise the argument based on reciprocity cannot avail. A similar argument was advanced before the House of Lords in *Mc. Clelland v. Northern Ireland Health Board* 1957 2 All E.R. 129 which was rejected by Lord Evershed in the following words :

"And the argument on reciprocity seems to me, with all respect to those who have taken a different view, to beg the very question which we have to decide. As a matter of practical common sense, the situation not the employer board and that of one of its servants are very different. The loss or damage to the Board occasioned by the departure of one of its servants would, save in very exceptional circumstances, be negligible. To a servant, certainly in the position of the appellant, the security of employment with the Board for period of working life is of immense value."

16. In this context, it will be useful to refer to certain observations of a seven Judges Bench of the Supreme Court in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* . No doubt, the facts of the case are entirely different. There, the Supreme Court was concerned with the validity of Rules 148(3) and 149(3) of the Railway Establishment Code which dealt with the termination of service of permanent pensionable and non-pensionable railway servants on stipulated period of notice being given or on paying the pay for the period of notice. Referring to the nature of the right which a permanent railway servant had under the relevant railway rules *Gajendragadkar, J.,* (as he then was) observed as follows :

"A person who substantively holds a permanent posts has a right to continue in service subject of course to the Rule of superannuation and the Rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise that on the ground of superannuation or

compulsory retirement, must per se amount to his removal, and so, if by Rule 148(3) or Rule 149(3) such a termination is brought about, the rule clearly contravenes Art. 311(2) and must be held to be invalid."

The learned Judge further observed as follows :

"At this stage, we ought to add that in a modern democratic State the efficiency and incorruptibility of public administrations of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. If a permanent civil servant is guilty of misconduct, he should be no doubt be proceeded against promptly under the relevant disciplinary rules, subject, of course, to the safeguard prescribed by Art. 311(2); but in regard to honest, straightforward and efficient permanent civil servants, it is of utmost importance even from the point of view of the State that they should enjoy a sense of security which alone can make them independent and truly efficient. In our opinion, the sword of Damocles hanging over the heads of permanent railway servants in the form of Rule 148(3) or Rule 149(3) would inevitably create a sense of insecurity in the minds of such servants and would invest appropriate authorities with very wide powers which may conceivably be abused."

In this connection, no distinction can be made between pensionable and non-pensionable service. Even if a person is holding a post which does not carry any pension, he has a right to continue in service until he reaches the age of superannuation and the said right is a very valuable right. That is why the invasion of this right must inevitably mean that the termination of his service is, in substance and in law, removal from service."

17. In this view, the learned Judge struck down Rule 148(3) and Rule 149(3) as invalid besides they were inconsistent with the provisions of Art. 311(2).

Subba Rao, J.

as he then was, in his concurring judgment held as follows :

"A title to an office must be distinguished from the mode of its termination. If a person has title to an office, he will continue to have it till he is dismissed or removed therefrom. Terms of statutory rules may provide for conferment of a title to an office and also for the mode of terminating it. If under such rules a person acquires title to an office, whatever mode of termination is prescribed, whatever phraseology is used to describe it, the termination is neither more nor less than a dismissal or removal from service; and that situation inevitably attracts the provisions of Art. 311 of the Constitution

These rules clearly lay down that a railway servant on a substantive appointment to a permanent post acquires a lien on that post and he does not lose it till he attains the age of superannuation or is dismissed or removed in the manner prescribed, that is he acquires a title to hold substantively a permanent post. It is not of much relevance to give any particular nomenclature to that post. It may

not be a life tenure. It may not also be a permanent post in the literal sense of the term, but it confers a title to that post with all the advantages appertaining to that post and ordinarily it comes to an end only on the incumbent attaining the age of superannuation, with or without pensioner benefits. Briefly stated the aforesaid Fundamental Rules embodied in Vo. II of the Code create offices of stability and security which for all practical purposes are permanent posts. If so, the termination of services of such a servant can only be dismissal or removal, for he will be deprived of his title to the said office. If that was the legal position for the reasons already given, the said Rule 148(3) and Rule 149, conferring a power on the appointing authority to remove such a permanent servant on notice would infringe the constitutional protection given to a Government servant under Art. 311 of the Constitution. A permanent post and such rules cannot stand together; the latter must inevitably yield to the former."

Das Gupta, J.

in his concurrent, but separate judgment, struck down the relevant rules on the ground that they were violative of Art. 14 of the Constitution of India. The learned Judge observed as follows :

"I find on scrutiny of the rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The rule, thus enables the authority concerned to discriminate between two railways servants to both of whom rule 148(3) equally applied by taking action in one case and not taking it in the other (sic). In the absence of any guiding principle in the exercise of the discretion by the authority of the rule, therefore, to be struck down as contravening the requirements of Art. 14 of the Constitution."

In *Gurdev Singh Sidhu Vs. State of Punjab and Another*, a five Judges bench decision of the Supreme Court speaking through Gajendragadkar C.J., observed thus :

"In this connection it is hardly necessary to emphasises that for the efficient administration of the State, it is absolutely essential that permanent public servants should enjoy a sense of security of tenure. The safeguard which Art. 311(2) affords to permanent public servants is no more than this that in case it is intended to dismiss, remove or reduce them in rank, reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them It seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Art. 311(2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Art. 311(2) does not apply, because such retirement is neither dismissal nor removal of the public servant. If a permanent public servant is compulsorily retired under

the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Art. 311(2) mainly because that is the effect of a long series of decisions of this Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation, and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot, we think, be treated as falling outside Art. 311(2). The termination of the service of a permanent public servant under such a rule, though called compulsory retirement, is in substance removal under Art. 311(2)."

In that case, the Supreme Court struck down Art. 9.1 of the Pepsu Service Regulations as amended by the Governor of Punjab by a notification issued on 19.1.1960 enabling the state Government to compulsorily retire a permanent Government servant only after ten years of service as it contravened Art. 311(2) of the Constitution and, therefore, was invalid.

18. I am conscious of the fact that in *P. Radhakrishna Naidu and Others Vs. Government of Andhra Pradesh and Others*, rejecting the challenge to the premature retirement of the petitioner therein on the ground that it was violative of Art. 14 the Supreme Court observed as follows :

"Equality of opportunity for all citizens in matters relating to employment is not violated by provisions for compulsory retirement of Government servants in public interest after the completion of a certain period of qualifying service or attainment of certain age".

This latter decisions does not in any way whittle down the propositions of law laid down by the Supreme Court in *Moti Ram Deka's* case and *Gurudev Singh's* case with regard to termination of the service of a permanent civil servant by giving the prescribed notice. The principle of these decisions have been followed by *Rama Joshi, J., in T.G. Srinivasa Murthy, etc., etc. Vs. Bharat Earth Movers Ltd. etc., etc.,* . I have already referred to this judgment while dealing with the first point. The learned Judge was concerned with the validity of the service rules framed by B.E.M.L., H.M.T. and Reserve Bank of India providing for termination of service by a mere notice on the part of the employers. The learned Judge after referring to a number of decisions of the Supreme Court held thus :

"In the light of the principles emerging from the above four decisions, and those laid down in *Matiram Deka's* case, it appears to me that conferment of power to terminate the services of permanent employees of public bodies at any time by a simple notice by the impugned Rules, is arbitrary, unreasonable and discriminatory as the exercise of the power is not made subject to any further condition, namely, the power under the rules could be invoked only after the employee had attained the prescribed age or had put in a prescribed number of years of service, both of which are reasonable, so that security of tenure in a

large measure was guaranteed and, therefore, the impugned Rules would have to meet the same fate as the Rules 148(3) and 149(3) of the Railway Establishment Code did in Motiram Deka's case when tested on the touchstone of Art. 14 and Art. 16(1) of Constitution."

19. The learned Solicitor General relied upon the decision of a Bench decisions of the Bombay High Court in Manohar P. Kharkar and another v. Raghu Raj and another, 1981 I L.L.J. 459. In the said case the Division Bench of the Bombay High Court upheld the validity of Rule 48 of Air India which enabled the management to terminate the services of its officers by giving notice for prescribed period or salary in lieu of notice without assigning any reason. The Bench decisions of the Bombay High Court has been considered by Rama Jois, J., of the Karnataka High Court in T. G. Srinivasa Murthy's case (supra). As pointed out by Rama Jois, J., the Bombay High Court rested the decision on two grounds, viz, the employees of statutory corporation have no right to security of tenure and they could derive no support from Motiram Deka's case as it related to civil servants governed by Art 311(2). The Second ground was that the position of permanent employees of the statutory corporation is equivalent to that of temporary civil servants or probationer and, therefore, their services can be terminated at any time by a simple notice. The learned Judge of the Karnataka High Court has correctly pointed out, if I may say so with respect, that the distinction sought to be made by the Bench of the Bombay High Court on Motiram Deka's case cannot be held valid in view of the fact that it is now settled that security of tenure which is applicable to the employees of the agencies or instrumentalities of the Union or the States which fall within the meaning of the State under Art. 12 of the Constitution of India. The observation of Chinnappa Reddy, J., in Managing Director v. Vijay Narayan Vajpayee (Supra) which had already been extracted while dealing with the first point may be recalled in this context. As regards the second ground relied on by the Bench of the Bombay High Court also I am in respectful agreement with the opinion expressed by Rama Jois, J., of the Karnataka High Court that equation of permanent employees with temporary employees and probationers in the service of the public Corporation which fall within the meaning of State under Art. 12 of the Constitution would go against the well-recognised difference between permanents employees and temporary employees and probationers in service parlance and consequently would result in the treatment of dissimilarly situated persons equally, which would be an violation of the content of equality before law and equal opportunity in matters relating to employment under State guaranteed under Arts. 14 and 16 of the Constitution of India.

20. The substance of the above decisions that a person who is appointed to a permanents post either in Government service or in a Corporation or a company which falls within the meaning of State under Art. 12 of the Constitution acquires a status or a title to the post and is entitled to hold the same unto the age of superannuation; unless it be that he is removed or dismissed from service on the ground of misconduct. Such a right is a very valuable right and the same cannot

be defeated by reserving a right in the employer to terminate the services of the employees without assigning any reason by giving notice for a prescribed period or salary in lieu of notice. If this be the true position of law with regard to a civil servant or to a service of an employee where an element of public employment is involved, then it is reasonable to presume that Rule 13.1 of the service Rules was not intended to be inconsistent with the general principles of law and to make a departure from the said principle. On the other hand, the rule has to be read harmoniously and according to well-known established principles of law. When two constructions are possible and the acceptance of one construction would involved a violation of settled principle of law, the Court should normally, accept that construction which is reasonable and which is in harmony with the rest of the provisions in the rules. In this case under Rule 12.1, an employee of the management is entitled to continue in service until the age of superannuation, viz., 58 years go age and it would be unreasonable to presume that the management intended to deprive an officer of that valuable right by reserving to themselves a right to terminate his services by giving the notice prescribed without assigning any reason. I, therefore, accept the argument of Mr. Dolia, the learned counsel for the petitioner, that the termination that is contemplated under Rule 13.1 by giving the prescribed notice, is a termination of an officer in the event of his being found unsuitable for continuation in service of the company on an appraisal of his performance as provided for under Rule 9.1 of the Service Rules.

21. In view of the finding that Rule 13.1 of the Service Rules does not confer a power on the management to terminate the services of an officer independently of Rule 9.1 of the Service Rules, it is unnecessary to consider the question whether even assuming that Rule 13.1 of the Service Rules confers an independent power on the management to terminate the services of an officer by giving notice for the prescribed period mentioned therein, the Rule is arbitrary and violative Arts. 14 and 16 of the Constitution of India.

22. The next question to be considered is whether the impugned order is vitiated by violation of the principles of natural justice and is liable to be set aside in view of the fact the petitioner was not given an opportunity of being heard before his services were terminated. The question whether the order of termination in the present case is punitive in character and cast a stigma and is vitiated by mala fides can also usefully be considered in this context. Rule 9.1 of the Service Rules deals with performance appraisal and increments. An officer will not be entitled to automatic increments. He will be eligible for increment only on the performance appraisal reviewed and the recommendations of the appropriate promotion committee. Under Rule 4.2.1. in the case of promotion of officer to the grade of Rs. 1300-1600 and above, the promotion committee would be constitute by the Board of Directors. Under rule 4.2.2. in the case of all other categories of officers the promotion committee would be constituted by the Managing Director. It, therefore, follows that the appraisal review has to be made by the promotion committee constituted by the Board of Directors in the case of

officers to the grade of Rs. 1300-1600 and above. The said Rule also enables the management to terminate the services of an officer if he is found unsuitable for continuation in the company's service. However, the condition precedent is he must be found unsuitable on the appraisal of his performance. The appraisal review has necessarily to be made by the appropriate promotion committee referred to in Rules 4.2.1. and 4.2.2. The question for consideration in this case is whether there has been such an appraisal and whether the petitioner has been found unsuitable for continuation in the company's service based on the appraisal of his performance. A further question that will arise for consideration is whether the petitioner is entitled to be heard before he is found unsuitable, on the basis of an appraisal of his performance. I have already held that under the rules the petitioners is entitled to continue in service till he attains the age of superannuation, viz., 58 years. In other words, he has got a security of tenure of service till he completes the age of 58 years and the said right to continue in service till he attains the age of 58 years is of immense value to the petitioner. It is in the light of this, the question whether an officer of the management will be entitled to notice regarding the appraisal of his performance has to be considered. Appraisal of the performance of an officer means the estimation of the worth or the quality of the work done by an officer. If the management has to come to a conclusion that on an appraisal of performance of a particular officer he is not suitable for continuation in service, it must naturally follow that the officer is entitled to be heard as to why in the opinion of the management his performance has been such as to compel the management to come to the conclusion that he is unsuitable for continuation in the service of the management. The officer must feel satisfied that the authorities have properly evaluated his performance and come to a conclusion that his performance has been such as not to justify his continuation in the service of the management no longer. In this context, it will be useful to refer to the observations of Sarkaria J., in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, . In that case before the Supreme court it was argued that in view of the specific terms in the letter of appointment that the employee's service was purely temporary and that was liable to termination at the will and pleasure of the appointing authority without reason or notice, it would be open to the appointing authority to terminate the services of a purely temporary servants without assigning any reason. Referring to this argument Mr. Sarkaria, J., observed as follows :

"The argument is wholly misconceived. It is borrowed from the archaic common law concept the employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time. "This rule held the filed at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant like the rights of any other member of the household, were not his own, but those of his partner families."

The overtones of this ancient doctrine are discernible in the Anglo-American Jurisprudence of the 18th Century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K. K. Mathew, J., (vide his treatise : Democracy, Equality and Freedom, page 326), "of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers". To bring it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the constitutional protection of Arts. 14, 15, 16 and 311 is available. The argument is, therefore, overruled."

23. In the light of the above principle. I am inclined to agree with Mr. Dolia that before the management comes to a decision on the basis of the appraisal of the performance of an officer that he is unsuitable for continuation in service, the concerned officer would be entitled to be heard. If it were to be held that an employer would be entitled to terminate the service of an officer in public employment on a mere subjective appraisal of his performance it would amount to conferring an arbitrary power on the public authority to terminate the service of an officer who is entitled to continue in service till the age of superannuation and deprive him of that valuable right. In this case, admittedly no opportunity has been given to the petitioner before an appraisal, if any, as such was made. As a matter of fact, Mr. Dolia's contention was that no such appraisal was made as contemplated under Rule 9.1. I find from the file that there has been an appraisal of the petitioner's performance upto 31.3.1977. My attention has not been drawn to any document which would show that subsequent to 10.8.1977 there has been any appraisal of the performance of the petitioner as contemplated in Rule 9.1 also. I find from the file that there is a definite procedure regarding the performance appraisal of officers. The officers have to fill in the prescribed form. In the said form he has to state the objectives set for him for the year and that too in terms of quantity wherever possible and he has also to give the production targets and achievements during the period under appraisal. The officer also has to describe his performance during the year specially in terms of targets, objectives, budgets, etc. He has to further indicate the areas of his performance in which he feels that there is scope for improvement and the steps he has undertaken or proposed to undertake to improve himself. In the performance appraisal of the petitioner for the period 1.1.1976 to 31.3.1977 we find the following remarks made by his immediate superior : "(1) Conscientious and diligent. (2) Very analytical in his approach. Under The column "Weaknesses", the following remarks have been made : (i) Not very comparative, (ii) To avoid unpleasant situations, avoids decisions, (iii) Indulges in intrigue with some directors and union. Under the column "what steps have you undertaken or do you propose to help the officer overcome the

weaknesses in his performance ? "there is no remark. As against the column, "please state the areas of specific training which you believe will help improve the performance of the officer", there is the remark "general management". In the column "assessment", the technical ability, leadership, decisions making, co-operation, time and cost consciousness and integrity and character are rated "good". The overall assessment of the petitioner is "good". In the column "promotion prospects" the petitioner is rated fit for promotion, "not immediately, but in due course." There is the following note : "The substance of a report will, as a rule, be communicated to the officer reported on either orally or in writing as may be considered appropriate by the reporting officer and the fact of such communication noted on this report. Where the reporting officer feels that such a communication will serve no useful purpose and may only discourage the officer reports on, the decision not to communicate should also be noted." Under the column "please state the officer's reaction to the appraisal; if the appraisal was not discussed with him, please state the reason for not doing so", there are no remarks. There is also a column "recommendation of the reviewing officer". The reviewing officer has neither made any recommendation nor signed. In this case, the reporting officer is Tuiru, P. R. S. Rao and he has signed it on 19.8.1977. A perusal of the form of the performance appraisal for the period 1.1.1976 to 31.3.1977, clearly shows that an appraisal of an officer's performance has to be made on the basis of definite materials to be supplied by the officer himself. Further, the report to be made by the reporting officer on the basis of the particulars given by the concerned officer in his appraisal report will have to be communicated to him. This itself shows that any appraisal of the performance of an officer on the basis of which the management may take a decision that he is unsuitable for continuation in service can only be made after giving an opportunity to the concerned officer to place all the materials to enable the management to make an objective appraisal of his performance. This is further confirmed by the note which states that the report made on the basis of the appraisal should be communicated to the officer reported on either orally or in writing. The only answer of the learned Solicitor General was that the petitioner did not submit his appraisal report subsequent to the period 1-1-1976 to 31-3-1977. The fact that the petitioner did not submit his performance appraisal would not confer a right on the management to form their own appraisal with regard to the performance of the petitioner without giving him an opportunity. In its connection, it is necessary to take note of the fact that on 1-1-1976 the petitioner was promoted to the post of works Manager and with effect from 11-5-1976 he was promoted to the grade of Rs. 2,000-100-2,500 from the grade of Rs. 1,800-100-2,000-125/2-2,250. It may, therefore, be taken that as on 10-8-1977 when Mr. P. R. S. Rao signed the performance appraisal report, there was no complaint regarding the suitability of the petitioner for continuation in the service of the management. I am, therefore, of the view that the impugned order of termination is vitiated by a failure to conform to the principles of natural justice.

24. It is equally necessary to consider the circumstances in which the impugned order has been passed. The impugned order merely states "pursuant to the resolution of the Board of Directors dated 25th October, 1980 and the terms of clauses 13.1 of the Hindustan Photo Films Services Rules for Officers, you are hereby notified that your services are terminated with immediate effect and as required by the said Rules, a cheque for Rs. 5,000 representing two months basic pay in lieu of notice is enclosed". The impugned order does not contain any reference to Rule 9.1. It does not state that it has been found by the management that the petitioner is found unsuitable for continuation in the service of the management of an appraisal of his performance. However, in paragraphs 4 and 5 of the counter-affidavit filed by the management it is stated that under Rule 9.1 the management would be entitled to terminate the services of an officer if he is found unsuitable for continuation in the Company's service based on the appraisal of his performance and that on the company's own appraisal of the petitioner's performance the board of Directors decided to terminate the services of the petitioner by invoking the power under Rule 13.1 of the Service Rules. I have already found that Rule 13.1 does not confer any independent power on the management to terminate the services of an officer by giving the prescribed notice. Only in the event of an officer being found unsuitable on his performance appraisal, the management can terminate his services after giving him notice as required under Rule 13.1. I have already pointed out that the appraisal has to be made only on the basis of definite materials and after giving an opportunity to the officer to supply the relevant materials to enable the management to make an appraisal of his performance. In this case admittedly no such thing has been done. In this case, the Board of Directors have passed a Resolution based on the report of the Managing Director of the management. The said report contains a series of allegations against the petitioner. It has stated that the petitioner was found unsuitable for the post of General Manager and Mr. Rao was appointed. Because of that the petitioner became indifferent to various operational problems resulting in his failure to co-ordinate with other divisional heads. It is also stated that the petitioner chose not to deal with the Managing Director directly by not keeping him informed of vital information which as Works Manager the petitioner was required to do and then by stopping unilaterally the submission of daily production reports. It is further stated that notwithstanding the fact that the petitioner's earlier representation for being considered for the post of General Manager was turned down by the Board, the petitioner made a further representation to the Chairman on 15th June, 1978. The petitioner is said to have wilfully suppressed the fact that the Board had already dealt with his earlier representation and called for a through investigation/enquiry into the selection/appointment of General Manager, as if he was not aware of the procedure adopted in filling up vacant positions of Chief Executives in the Public Sector. The report then refers to certain acts of omission and commission on the part of the petitioner. It is stated that in March, 1978, the X-Ray slitting machine, a critical equipment in the conversion department had a breakdown and was not repaired for nearly eight days. The

complaint is that the petitioner not only did not take any interest in repairing the machine back to operation, but had been conniving to see that the job was delayed. Next, it is stated that during the annual shut down in May, 1978, there was a problem of a refrigeration system of functioning and the petitioner instead of encouraging the mechanics to find out the fault, instructed a mechanic "not to do anything", till his supervisors asked him to do so, thus indirectly instigating him to go slow. Then again the petitioner is accused of having criticised the promotion policy under the wage settlement in one of the union-management negotiations, thereby setting up the union against the management. The petitioner is again accused of having criticised the decision of the management openly in the union-management meeting about recruitment of the distributors' employees for the vacant marketing positions, and that he was, therefore, responsible for giving strength to the union's contention and was delaying the manning of various positions. It is further stated that the petitioner passed on information to the union. He is also said to have requested the C.I.T.U. leader to direct the trade union movement against the Managing Director. The Managing Director has expressed his opinion that the petitioner entertains a feeling that nothing short of dislodging him (the Managing Director) from his present position would satisfy the petitioner. It is further stated that the petitioner used every occasion of the visit of dignitaries to make derogatory statements about the functioning of the management. The petitioner's insistence that he had a right to attend the Board meetings and to make representations to Directors directly have been referred to. It is stated that the petitioner was responsible for a news item containing personal remarks about the Managing Director which appeared in Deccan Herald. It is further stated that the petitioner did not start the work of task force of which he was the full-time Chairman till 5th February, 1980 and that he spent the period between 28th January, 1980 and 4th February, 1980 in frivolous correspondence imputing unwarranted motives to the Managing Director for the action and entertaining imaginary grievances. Ultimately, it is stated that the petitioner has become a deadwood and he is unable to contribute to the company in any way on the ground that when he was in the independent charge of the company twice in April, 1977 and in January, 1979 the total production in these two months were the lowest. It is further stated that the petitioner has been continuously acting in a manner prejudicial to the interest of the company and that unless timely action is taken, it will affect the company in due course. The report ends in the following words : "The Board's approval is, therefore, sought to invoke clause 13.1 of the HPF Service Rules of officers and terminate his service by giving him two months notice or to frame charges against him for acting in a manner prejudicial to the interest of the company (Clause 5.5 of Conduct Rules), hold an enquiry by the Commissioner for Departmental Inquiries of the CVC and be guided by the finding of the Enquiry Officer". It contains a foot note in ink that the petitioner had surreptitiously sent a copy of the task force report to Sri P. Ramamoorthy, M.P., and leaking out a document which is virtually a Board paper to an outsider is another instance of the petitioner contravening the Service Rules of the Company. It is not disputed that the resolution of the

Board was taken on the basis of the said report of the Managing Director. The report of the Managing Director shows that he petitioner is guilty of "acting in a manner prejudicial to the interest of the company (Clause 5.5 of Conduct Rules). As a matter of fact, the Managing Director has sought the approval of the Board either to invoke clause 13.1 of the Service Rules and terminate the petitioner's services by giving him two months' notice or to frame charges against him for acting in a manner prejudicial to the interest of the company. It is, therefore, clear that the foundation for the termination of the service of the petitioner is the fact that he has been acting in a manner prejudicial to the interest of the company within the meaning of clause 5.5 of the Conduct Rules. If that be the position, then certainly the remedy for the authorities would have been to follow the procedure prescribed under the Conduct Rules, and not to terminate the services of the petitioner in accordance with Rule 13.1 of the Service Rules. The Conduct Rules does not give the management a choice to hold an enquiry against an officer and impose a proper penalty against him depending upon the fact whether charges of misconduct are proved against him or not, or to terminate his services by giving him notice. Rule 13.1 certainly cannot be invoked in such a case. Rule 13.1 can be invoked only in a case where a particular officer is found unsuitable for continuation in service on the appraisal of his performance. The note of the Managing Director cannot certainly be taken to be an appraisal of the petitioner's performance within the meaning of Rule 9.1 of the Service Rules. On the other hand, the note of the Managing Director is replete with acts of commission and omission on the part of the petitioner in the discharge of his official duties which led to Managing Director to summarise the petitioner's conduct as one as acting in a manner prejudicial to the interest of the company within the meaning of Clause 5.5 of the Conduct Rules. Further, the Managing Director himself has stated that the petitioner made an unsuccessful representation for being considered for the post of General Manager and notwithstanding the fact that the representation was turned down, he made a further representation, wherein he had asked for a through investigation/enquiry into the selection/appointment of General Manager. It cannot be forgotten that the appointment regarding which the petitioner sought an investigation is the appointment of the very person who has given a report to the Board. Then again there is a reference to the fact that in March, 1978 the petitioner did not get the X-ray slitting machine repaired but connived to see that the job was delayed. In this connection, reference has to be made to another office not dated 10.4.1978 addressed by the petitioner wherein he has stated as follows : "It pains me to note your remark in the above referred note that timely action was not taken by me on the breakdown of X-Ray cutting machine. That you have put such a derogatory and serious remark in writing without even caring to check it with me speaks volumes for itself. Considering the quantum of work and complicated nature of troubles, though it took days to repair the machine fully, I am satisfied that the repair work was done most expeditiously by Engineering with M.E. himself supervising the work day and night. I was also following with the work everyday. Another point raised by you in the note is that I have not informed you

in time the breakdown of the X-Ray cutting machine. Informing you any breakdown was never the practice. And though there were equally or most serious breakdown, you have never asked for the information. Now that you want such information it will be sent to you. "Finally the petitioner has added : "As my professional record is precious to me, I request that either the remarks mentioned above about my work which you have put in in writing may be withdrawn in writing failing which I have no option but to ask you that the entire matter with all the papers to be kindly placed before the Board for an enquiry during the next Board meeting". No such thing seems to have been done. In the circumstances, again to make such a comment on the petitioner and to make a decision to terminate the petitioner's services on that ground, though it may be one of the grounds, as would be in violation of all canons of justice. I am, therefore, satisfied that he termination of the petitioner's services in this case is on the ground that he has been acting prejudicially to the interest of the company within the meaning of Rule 5.5 of the Conduct Rules and it amount to an order of punishment. Once I come to the conclusion that he impugned order in punitive in character, then it must necessarily follow that such an order can only be passed after the procedure prescribed under the Conduct Rules is followed. It is unnecessary to refer to the authorities in support of the proposition that the Court can in appropriate cases go behind an impugned order of termination of service and find out the reason behind the order. In this case, the order served on the petitioner does not give any reasons. It only refers to Rule 13.1 of the Service Rules. In view of the fact that Rule 13.1 is dependent on Rule 9.1 the Court has necessarily to go into the question whether the termination has been made in terms of Rule 13.1 read with Rule 9.1. The counter-affidavit itself stated that the termination order was passed on the company's own appraisal of the petitioner's performance and the Board of Directors' decision to terminate the service of the petitioner. This naturally compelled the Court to examine the question whether the termination of the petitioner's services was due to the appraisal of the petitioner's performance in terms of Rule 9.1 or the petitioner's services were terminated for any misconduct. It is now settled by decisions of the Supreme Court that in appropriate cases it will be certainly open to the Court to go behind the order of termination and find out whether the termination and find out whether the termination was a termination simpliciter in terms of the contract of service or the termination was punitive in nature. Here, it is crystal clear that the conduct of the petitioner which amounts to a misconduct within Rule 5.5 of the Conduct Rules is the very foundation on the basis of which the Managing Director has sought the approval of the Board to terminate the services of the petitioner and on the basis of which the Board of Directors took a decision to terminate the services of the petitioner. I am, therefore, clearly of the opinion that the order of termination in this case is vitiated by the violation of the principles of natural justice and by a failure to hold an enquiry as contemplated under the Conduct Rules. In the result, I set aside the order of termination. This, however, will not prevent the authority, if they so desire, to frame charges against the petitioner as suggested by the Managing Director under Rule 5.5 of

the Conduct rules and hold an enquiry. The Writ Petition is allowed. There will be no order as to costs.