

(2014) 03 SHI CK 0049
In the High Court Of Himachal Pradesh
Case No : CWP No. 3546 of 2010

Dharub Pal and others

APPELLANT

Vs

Himachal Pradesh State Electricity Board and Others

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Constitution of India, 1950 — Article 12 14 16
Criminal Procedure Code, 1973 (CrPC) — Section 195
Electricity (Supply) Act, 1948 — Section 12A(4)(b) 79(e)
Penal Code, 1860 (IPC) — Section 193 196 228

Citation : (2014) 03 SHI CK 0049

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, for the Appellant; Raj Pal Singh, Advocate for the Respondent-Board, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in all these petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, for clarity sake facts of CWP No. 3546 of 2010 have been taken into consideration.

CWP No. 3546 of 2010

A conscious decision was taken by the respondent-Board on 9.10.1995, which is reproduced as under:

It was decided that regular and ITI qualified persons would be considered against direct posts on ad hoc basis. However, they would be regularized only when posts of their quota become available in the grade they are promoted.

2. The matter was, however, referred back to the Secretary of the Board vide letter dated 9.1.1996 to seek clarification on the following points:

1. There is 25% quota for direct recruitment for the post of Lineman. Feeding category for this post is Asstt. Lineman. So, T/mates cannot be promoted against this post ignoring the channel of Asstt. Lineman.

2. The mode of filling up the posts of Electricians is by direct recruitment only. So, there is no feeding category for this post.

50% vacancies of SSA (Telephonists now re-designated as SCA) are filled up by direct recruitment but the feeding category for the post is helper (S/Station). So, T/Mates or ALMs cannot be considered for the promotion against the vacancies of SSAs.

3. The Secretary of the Board clarified that T/mate would not be entitled to be considered against the direct recruitment posts of Lineman by ignoring the channel of ALM as there is no provision of direct recruitment in the category of ALM. Thus, only the ALM having educational qualification as matric or its equivalent with ITI certificate in the trade of Wireman/Electrician, as per R & P Regulations would be considered for ad hoc promotion as Lineman against 25% quota for direct recruitment. This decision has been taken to lighten the shortage of Linemen who could not be recruited against direct recruitment quota due to ban. The Chief Engineer (OP) South, H.P.S.E.B., Shimla sent a communication to the Superintending Engineer (OP) Circle, H.P.S.E.B., Shimla, Mandi, Solan, Bilaspur, Nahan and Rampur on 18.3.1996 requesting them to implement the decision at their level under intimation to his office. The Chief Engineer (OP), South has specifically mentioned therein that it may be made clear to the individuals that their regularization in higher grade to which they are promoted, will only be considered on their turn for promotion to the concerned post in normal course against the quota prescribed for promotion in R & P Regulations. Thereafter, Class-III Departmental Promotion Committee (Field Technical Staff) recommended the names of the petitioners for promotion as Lineman on ad hoc basis as stop gap arrangement in the pay scale of Rs. 1365-45-1500 from the date of their actual date of taking over as such. Their office orders, whereby they were promoted, are Annexures RA-II and RA-III dated 23.8.1996 and 9.1.1997, respectively. A meeting was convened between the Member (Administration) and the representatives of H.P.S.E.B. Technical Employees Union on 3.12.2002 at 11.00 A.M. in the committee room. It was agreed to submit the case to the Whole Time Members of the Board for regularization of ad hoc Linemen and SSAs from the date of their ad hoc promotion against the available vacant posts. The memorandum for Whole Time Members meeting was also prepared. The following agenda was to be placed before the Whole Time Members of the Board:

To regularize the services of all L/Men/SSAs/Electricians who have been promoted from the feeding categories possessing requisite qualification as per R & P regulation on ad hoc/out of turn basis, against direct recruitment quota for L/Man/SSA/Electrician in relaxation to the provisions of R & P regulations.

4. The Whole Time Members of the Board approved the agenda item No. 298-28.

A communication to this effect was sent by the Secretary of the respondent-Board to the Chief Engineer (OP) North, Dharamshala, South, Shimla, Central Zone, Mandi, Chief Engineer (Transmission), HPSEB and Chief Engineer (Generation), HPSEB, Sundernagar. However, vide letter dated 5.4.2007, earlier decision dated 27.12.2002, was reviewed and it was decided to promote the petitioners and similarly situate persons with effect from 31.3.2003, subject to clearance of vigilance reports and ACRs etc. The Superintending Engineer, Operation Circle, HPSEB, Shimla issued a letter Annexure RA-VII whereby the petitioners were regularized as Linemen on officiating basis in the pay scale of Rs. 4600-7250 from 31.3.2003.

5. According to the reply filed by the respondent-Board, it has decided to promote matriculate and ITI qualified Assistant Linemen to the posts of Linemen against the quota meant for direct recruitment purely on ad hoc basis with stipulation that their services were to be regularized only when posts of their quota became available in the grade they were promoted. There is a reference to the Recruitment and Promotion Regulations. There is also a reference to the instructions issued by the State Government from time to time governing the issue of counting of ad hoc services towards seniority. It is also stated therein that the services of the petitioners and similarly situate persons were regularized from different dates and to avoid such infirmity the decision was reviewed by the Board and a single deemed date for regularization of the petitioners and similarly situate persons, i.e. 31.3.2003 was fixed vide letter dated 5.4.2007. It is in these circumstances, services of the petitioners were regularized with effect from 31.3.2003 vide Annexure RA-VII dated 4.1.2008.

6. The decision whereby the petitioners were promoted on ad hoc basis as Linemen was assailed by way of O.A. No. 103/2003 before the erstwhile Himachal Pradesh Administrative Tribunal. The same was decided by the Tribunal on 18.5.2005. It will be apt to reproduce paras 6 and 7 of the judgment dated 18.5.2005 as under:

6. Annexure P-3 is a notification issued in exercise of the powers conferred u/s 79(e) of the Electricity (Supply) Act, 1948 whereby the service condition have been laid down. As per this notification the post of lineman is to be filled up 25% by way of promotion from amongst the incumbents between 18 to 25 years of age with essential qualifications of matric with ITI certificate in Electrician Wiremen Trade and those who are matriculates and have undergone apprenticeship training of lineman and have possessed All India Trade Test in the Trade. Undisputedly, there being a ban on the direct recruitment the respondent-Board in exercise of the power vested in it u/s 79(e) has taken decision to fill up these posts on direct recruitment from amongst the Assistant Linemen possessing the above essential qualification. Admittedly on perusal of Annexure P-4 it is amply evident that applicant Nos. 1 and 2 are matriculates and not possessing the ITI diploma and applicant Nos. 3 and 4 are 8th pass. On the other hand private respondents are possessing qualification of matric with ITI diploma

in requisite discipline.

7. Hence since the applicants are lacking in requisite essential qualification, they have no locus standi to file and maintain the present OA. Looking to their prayer, they want this Tribunal to tie the hands of respondent Board from taking any decision for their smooth functioning. The impugned decision is justified in view of the powers vested u/s 79(e) of the Electricity (Supply) Act, 1948. As such applicants can claim no discrimination as they are not possessing the requisite qualification. The Hon'ble Apex Court in Assam State Electricity Board and others Vs. Gajendra Nath Pathak and others, has held that classification on the basis of qualification is valid between ITI certificate holder and those holding diploma by undergoing 3/4 years course and the High Court was not right in holding that no distinction could be made on the basis of qualification of diploma and certificate of ITI. (Constitution of India Articles 14 and 16) Assam State Engineers Service Regulation, 1973, Regulation No. 2.

7. Petitioners have filed detailed rejoinder to the reply filed by the respondent-Board. Petitioners have placed on record the details of the Junior Engineers, who were promoted on the same and similar conditions on ad hoc basis, but were regularized on the basis of the instructions issued by the State Government vide Annexure P-16 dated 14.9.2007.

CWP No. 3622/2010

8. Petitioners were promoted on ad hoc basis as Linemen vide Annexures RA-2, RA-3, RA-4 and RA-5 dated 29.6.1996, 13.11.1997 and 21.11.1998, respectively. However, they were regularized with effect from 31.3.2003 vide Annexure RA-10 dated 12.9.2007.

CWP No. 4102/2010

9. Petitioners were promoted as Linemen on ad hoc basis vide promotion orders dated 16.6.1997, 8.7.1996, 19.9.1998, 11.5.1999 and 24.10.2000, respectively. Now, they have been regularized vide Annexure RA-X dated 12.2.2008 with effect from 31.3.2003.

CWP No. 4106/2010

10. Petitioners were promoted as Linemen on ad hoc basis on 9.8.1996, 27.6.1997 and 1.10.2001 respectively. They were regularized on 27.12.2002 and thereafter with effect from 31.3.2003.

11. Mr. Sanjeev Bhushan has vehemently argued that once a conscious decision had been taken on 27.12.2002 to regularize the services of the petitioners, the same could not be unilaterally changed by fixing artificial date, i.e. 31.3.2003. In other words, his submission is that the petitioners and similarly situate persons were not issued any notice before the decision dated 27.12.2002 was reversed vide Annexure P-8 dated 5.4.2007. He then contended that the petitioners were duly eligible and qualified for promotion to the post of Linemen. He further

contended that the petitioners were promoted since there was ban on direct recruitment and the functioning of the Board was badly affected. He then contended that the decision has been taken by the Whole Time Members of the Board to regularize them as per letter dated 27.12.2002, but the same has been changed without any justification on 5.4.2007. According to him, his clients were fully qualified to be promoted to the post of Lineman as per the Recruitment and Promotion Regulations. According to him, the cut off date, i.e. 31.3.2003 has no nexus and the same has been arbitrarily picked up. He then contended that the promotion of the petitioners was also assailed by way of O.A. No. 103/2003 before the erstwhile Tribunal. The same was dismissed by the Tribunal on 18.5.2005 by a well reasoned judgment. He further contended that the Junior Engineers, who were promoted on ad hoc basis have been regularized vide Annexure P-16 on the basis of instructions issued by the State Government on 6.10.2006 and adopted by the respondent-Board. He finally contended that since the petitioners have been working for more than five years together cannot be termed as stop gap arrangement.

12. Mr. Raj Pal Singh has strenuously argued that the promotion of the petitioners was stop gap arrangement to tide over the crises since there was ban on direct recruitment. He then contended that the decision has been taken to bring uniformity in the date of regularization. Petitioners knew this position and thus they were not entitled for the issuance of notice. He has referred to various instructions issued by the State Government and adopted by the respondent-Board from time to time governing the issue of counting of seniority of the incumbents, who were appointed on ad hoc/officiation basis.

13. The post of Lineman was to be filled up 20% by direct recruitment and 80% by promotion. Essential educational and other qualifications were matric with ITI certificate in electrician/Wireman trade and those who were matriculate and have undergone apprenticeship training of Lineman and have passed the India trade test. The post of Assistant Lineman was in feeder category for promotion to the post of Lineman having four years regular service in the grade. Since there was a ban on direct recruitment, respondent-Board took a conscious decision as per Annexure RA-1 dated 9.10.1995 to the effect that regular and ITI qualified persons were to be considered against direct posts on ad hoc basis. The same decision was reiterated as per Annexure P-1 dated 18.3.1996. In the meeting held between the Members (Administration) and the representatives of H.P.S.E.B. Technical Employees Union, it was agreed to submit the case to the Whole Time Members of the Board for regularization of ad hoc Linemen and SSAs from the date of their ad hoc promotion against the available vacant posts. The memorandum to this effect was also prepared, as reproduced hereinabove, to regularize the services of all Linemen/SSAs/Electricians who have been promoted from the feeding categories possessing requisite qualification as per Recruitment and Promotion Regulations on ad hoc/out of turn basis, against direct recruitment quota for Lineman/SSA/Electrician in relaxation to the provisions of Recruitment and Promotion Regulations. The Whole Time Members of the Board

in 298th meeting approved the agenda item as conveyed by the Secretary of the respondent-Board to the Chief Engineer (OP) North, Dharamshala, South, Shimla, Central Zone, Mandi, Chief Engineer (Transmission), HPSEB and Chief Engineer (Generation), HPSEB, Sundernagar vide letter dated 27.12.2002. However, the decision dated 27.12.2002 was arbitrarily altered on the ground that the decision to regularize has been implemented by the Units of respective zones with different dates due to which no deemed date to regularize services of the Linemen could be indicated in the said authorization. It was also observed that while integrating the seniority for the purpose of promotion to the next post of JE (E/FM (Line) it has been observed that the regularization of Linemen from different date has resulted in assigning of wrong/lower seniority to some of the seniors. It is in these circumstances the Whole Time Members of the Board in the 346th meeting held on 14.3.2007 approved a single deemed date, i.e. 31.3.2003 to regularize services of ad hoc Linemen category vide agenda item No. 346.6.

14. Petitioners made several representations against this decision. Petitioners were matriculate with ITI certificate and their names have been recommended for promotion on ad hoc basis by a duly constituted selection committee as per their promotion orders. The decision has been taken to regularize the petitioners after due deliberations as is evident from Annexures RA-1, P-1 dated 18.3.1996, P-2, P-3 and P-4 dated 27.12.2002. The promotions of the petitioners were specifically assailed by filing O.A. No. 103/2003. The Tribunal dismissed the same by a well reasoned judgment. There was no justification in bringing the matter before the Whole Time Members of the Board again once a final decision had been taken by the Board in its 298th meeting. There has to be consistency in the decisions taken by the respondent-Board from time to time. The decision cannot be changed unilaterally, that too, without hearing the aggrieved parties. Petitioners have acquired a right for regularization as per decision taken by the Whole Time Members of the Board in its 298th meeting. Their seniority was to be counted from their initial date of promotion. Petitioners had discharged their duties for more than a decade on ad hoc basis when the decision was taken to regularize the petitioners with effect from 31.3.2003 instead of 27.12.2002. Period of ten years cannot be treated as stop gap arrangement. The respondent-Board was in a dire need to fill up the posts of Linemen but the same could not be filled by direct recruitment since there was ban. The decision was taken by the highest body of the Board to fill up the posts by way of ad hoc promotion from the candidates who were fully qualified and eligible as per Recruitment and Promotion Regulations. There was only one requirement that the petitioners were to be adjusted against their respective quota. It has not come in the reply that the quota was not available with the respondent-Board at the relevant time and thereafter.

15. Mr. Raj Pal Singh has drawn the attention of the Court to instructions issued by the State Government governing the principle of counting of temporary/ad hoc services towards seniority vide Annexure RA-IV. The State Government has been issuing various office memorandum governing the principle of counting of

temporary/ad hoc services towards seniority from time to time. These instructions were duly adopted by the Board as per material placed on record. There is also a reference in the reply that the decision to alter the date of regularization from 27.12.2002 to 31.3.2003 has been taken on the basis of instructions issued by the State Government.

16. Mr. Sanjeev Bhushan has drawn the attention of the Court to the promotions of the Junior Engineers dated 19.8.2004 vide Annexures P-14 and P-15, whereby they have been promoted to the post of Assistant Engineers purely on ad hoc basis. The Junior Engineers, who were promoted purely on ad hoc basis, have been regularized by the Board on 14.9.2007 on the basis of instructions issued by the State Government vide letter dated 24.10.2002 adopted by the Board vide endorsement dated 30.10.2002 further amended/modified vide letter No. PER (AP)-C-F (1)/2002 dated 6.10.2006 while regularizing the Junior Engineers as Assistant Engineers, who were promoted on ad hoc basis, vide various office orders. This decision has been taken on 14.9.2007, as per Annexure P-16. When the decision was taken to alter the date of regularization from 27.12.2002 to 31.3.2003, same instructions were in vogue as mentioned in Annexure P-16 dated 14.9.2007. The Board cannot adopt two different yardsticks for its employees. One set of employees cannot be discriminated against without any valid classification. Petitioners have already been promoted on ad hoc basis being in possession of essential qualification by a duly constituted selection committee. Junior Engineers, who were promoted purely on ad hoc basis, have been regularized as per instructions issued by the State Government and adopted by the respondent-Board from time to time. Since the respondent-Board has made the instructions applicable to the Junior Engineers for regularization as Assistant Engineers, the same yardstick was required to be followed for regularizing the petitioner from the due date. The decision of the respondent-Board to regularize the petitioners with effect from 31.3.2003 instead of 27.12.2002 is wholly arbitrary. Thus, violative of Articles 14 and 16 of the Constitution of India. The respondent-Board has not only promoted the Junior Engineers on the basis of the instructions issued by the State Government and adopted by it, but the promotions have been given on regular basis retrospectively from the date of taking over the charge of post of Assistant Engineers on ad hoc basis. The Court is of the considered view that the petitioners are also required to be regularized from the date they were promoted on ad hoc basis as Linemen from 23.8.1996 and 9.1.1997. Decision of the respondent-Board Annexure RA-VII whereby the petitioners have now been regularized with effect from 31.3.2003 is declared illegal.

17. The circumstances under which the ad hoc/fortuitous services can be counted have been succinctly explained by their Lordships of the Hon"ble Supreme Court in The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, In this case, the dispute though was between the direct recruit and promotee but the general principles are relevant under what circumstances the services rendered on ad hoc/officiation basis can be

counted towards seniority. Corollary "A" and "B" reads as under:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

18. It is evident from corollary "A" that if an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation and in case where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. It is clear from corollary "B" that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

19. In the instant case, petitioners' appointment is strictly as per Recruitment and Promotion Regulations. They were duly eligible and qualified as per the Recruitment and Promotion Regulations. They have been appointed by the Class-III Departmental promotion Committee (Field Technical Staff). Their appointment cannot be said to be de hors the rules. The due procedure has been followed. They were appointed when there was ban on direct recruitment and in these circumstances the petitioners were promoted. The only caveat put in their ad hoc appointment was that petitioners would be regularized in their own quota. It has already been noticed hereinabove that it is not the case of respondent-Board that the posts were not available in their own quota from the date of initial appointment till their regularization. There was no procedural irregularity in their appointment. Even the period was not fixed for the ad hoc promotions. The promotions have been made on ad hoc basis after due deliberations and the decision has been taken by the highest decision making body to regularize them. Petitioners have worked uninterruptedly in the post till their regularization. The issue of confirmation as per corollary "A" is not attracted in this case.

20. Their Lordships of Hon^{ble} Supreme Court in Rudra Kumar Sain and Others Vs. Union of India and Others, have held that when a person is appointed after approval and consultation with appropriate authority and continuing in service for fairly long period, his appointment cannot be said to be stop-gap or fortuitous or ad-hoc. Their Lordships have held as under:-

16. The three terms "ad hoc", "stop gap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the

meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to "fortuitous". In Black's Law dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stop-gap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need."

17. In Oxford Dictionary, the word "ad hoc" means for a particular purpose, specially. In the same Dictionary, the word "fortuitous" means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyer's Law Lexicon (2nd Edition) the word "ad hoc" is described as "for particular purpose, Made, established, acting or concerned with a particular and or purpose". The meaning of word fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God".

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stop-gap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stop-gap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of

circumstances and situation in which such an (ad hoc, fortuitous or stop-gap) appointment can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In his view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stop-gap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

21. There are no reasons assigned why the cut-off date, i.e. 31.3.2003 has been picked up. The cut-off date has no object whatsoever. The decision has already been taken to regularize the petitioners and the same decision has been altered unilaterally by shifting the date from 27.12.2002 to 31.3.2003.

22. Their Lordships of the Hon"ble Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), have held that classification in revised pension formula between pensioners on the basis of the date of retirement specified in memoranda was arbitrary and violative of Article 14 of the Constitution of India. The classification made by the executive was held to be wholly arbitrary since the Court did not find a single acceptable or persuasive reason for this division. Their Lordships reiterated the established principle that classification has to be based on some rational principle and that must have nexus to the objects sought to be achieved. Their Lordships have also repelled the contention raised by the Union of India that the scheme was being made retroactive. The Court held:

...Petitioners accordingly contend that this Court may consider the *raison d'être* for payment of pension. If the pension is paid for past satisfactory service rendered, and to avoid destitution in old age as well as a social welfare or socio-economic justice measure, the differential treatment for those retiring prior to a certain date and those retiring subsequently, the choice of the date being wholly arbitrary, would be according differential treatment to pensioners who form a class irrespective of the date of retirement and, therefore, would be violative of Article 14. It was also contended that classification based on fortuitous circumstance of retirement before or subsequent to a date, fixing of which is not shown to be related to any rational principle, would be equally violative of Article 14 ...

...The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must

move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker Sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, when at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

...What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answers to these and incidental questions so as to render just justice between parties to this petition.

...The challenge is not to the validity of the pension liberalisation scheme. The scheme is wholly acceptable to the petitioners, nay they are ardent supporters of it, nay further they seek the benefit of it. The petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the Government servant retired subject to the only condition that he was governed by the 1972 Rules. No doubt, the benefit of the scheme will be available from the specified date, irrespective of the fact when the concerned Government servant actually retired from service ...

..If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to Government servants then those who

retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory ...

Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14 ...

...By your approach, are we making the Scheme retroactive? The answer is emphatically in the negative. Take a Government servant who retired on April 1, 1979. He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a relevant factor for computation of pension. Has the Government made it retroactive, 35 years backward compared to the case of a Government servant who retired on 30th March, 1979? Concept of qualifying service takes note of length of service, and pension quantum is correlated of qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier. It must be remembered that pension is related to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing. (See Craies on Statute Law, 6th Edn., p. 387). Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme. Undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalized pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits.

Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage the method adopted when pay-scales are revised. Revised pay-scales are

introduced from, a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the Court by its approach would be making the scheme retroactive, because it is implicit in theory of wages.

23. In *R.L. Marwaha Vs. Union of India (UOI) and Others*, the Apex Court has held that fixing of a date for the grant of benefit must have nexus with object sought to be achieved. Their Lordships have held as under:

There is no dispute that the ICAR though it is a body registered under the Societies Registration Act, 1960, is a body which is sponsored, financed and controlled by the Central Government. There has been a continuous mobility of personnel between Central Government departments and autonomous bodies, like the ICAR both ways and the Government thought, and rightly so, that it would not be just to deprive an employee who is later on absorbed in the service of the autonomous body, like the ICAR the benefit of the service rendered by him earlier in the Central Government for purposes of computation of pension and similarly the benefit of service rendered by an employee who is later on absorbed in the Central Government service the benefit of the service rendered by him earlier in the autonomous body for purposes of computation of pension. If that was the object of issuing the notification then the benefit of such notification should be extended to all pensioners who had rendered service earlier in the Central Government or in the autonomous body as the case may be with effect from the date of the said Government order. Now let us take the case of a person who had rendered service under the Central Government between January 1, 1953 and July 1, 1955 but who has retired from service of the ICAR in 1985. There is no dispute that such a person gets the benefit of the service put in by him under the Central Government for purposes of his pension. But another pensioner who has put in service under the Central Government during the same period will not get similar concession if he has retired prior to the date of the Government order if paragraph 7 of that order is applied to him. The result will be that whereas in the first case there is pensionary liability of the Central Government in the second case it does not exist although the period of service under the Central Government is the same. This discrimination arises on account of the Government order. There is no justification for denying the benefit of the Government order to those who had retired prior to the date on which the Government order was issued. The respondents have not furnished any acceptable reason in support of their case, except saying that the petitioner was not entitled to the benefit of the Government order because the order says that it would not be applicable to those who had retired prior to the date on which it

was issued. In the absence of any explanation which is worthy of consideration it has to be held that the classification of the pensioners who were working in the Government/autonomous bodies into two classes merely on the basis of the date of retirement as unconstitutional as it bears no nexus to the object to be achieved by the order.

We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984 that is the date of issue of the Government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the Government order. By doing so the Government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the Government order but with effect from August 29, 1984.

24. In *State of West Bengal and Others Vs. Ratan Behari Dey and Others*, the Court ruled that the State can specify a date with effect from which the Regulations framed, or amended, as the case may be, shall come into force and only condition is that in such cases the State cannot pick a date out of its hat. It has to prescribe the date in a reasonable manner, having regard to all the relevant facts and circumstances. Their Lordships have held as under:

...A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory ...

25. The cut-off date, i.e. 31.3.2003 is declared illegal by applying the principles of severability.

26. Petitioners have also not been heard before the decision has been taken on 5.4.2007 to their detriment. Petitioners have reasonable expectations that their services would be counted from the date of their initial promotion.

27. Their Lordships of the Hon^{ble} Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, have held that the employees of public/semi-govt. undertakings, statutory, statutory corporations or instrumentalities of State covered by Article have status. Employment in such undertakings being public employment, society has a stake and interest in it. Efficiency of employees is prime consideration and employees must have service security. Their Lordships have further held that *audi alteram partem* rule which in essence, enforces the quality clause in Article 14 of the Constitution is applicable not only to quasi judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the

Act or Regulation or Rule which is not the case here, Rules of natural justice do not supplant but supplement the Rules and Regulations. Their Lordships have held as under:

202. Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9(b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Art. 14 of the Constitution. It has also been held consistently by this Court that the Government carries on various trades and business activity through the instrumentality of the State such as Government Company or Public Corporations. Such Government Company or Public Corporation being State instrumentalities are State within the meaning of Art. 12 of the Constitution and as such they are subject to the observance of fundamental rights embodied in Part III as well as to conform to the directive principles in Part IV of the Constitution. In other words the Service Regulations or Rules framed by them are to be tested by the touchstone of Art. 14 of Constitution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), therefore, confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised. It is now well settled that the "audi alteram partem" rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule, which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regulation 9(b) does not expressly exclude the application of the "audi alteram partem" rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month's notice under Regulation 9(b) or pay in lieu thereof without recording any reason in the order and without giving any hearing to the employee to controvert the allegation on the basis of which the purported order is made.

28. It is no more *res integra* that principles of natural justice form integral part of Article 14 of the Constitution of India and it also amounts to right to fair treatment. The expressions "civil and evil consequences" and "rules of natural justice" have succinctly been explained by their Lordships of the Hon'ble Supreme Court in *Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another*, Their Lordships have held as under:

15. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly, i.e. fair play in action. As observed by this Court in *A.K. Kraipak & Ors. Vs. Union of India & Ors.*, the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see: *Income Tax Officer & Ors. Vs. M/s. Madnani Engineering Works Ltd., Calcutta*).

17. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in *State of Orissa Vs. Binapani Dei & Ors.*, the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

29. In *Rajesh Kumar (supra)* it has been held that in view of Section 136 of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. Section 136 of the Act, stipulates that any proceeding before an Income Tax Authority shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of Indian Penal Code, 1860 and also for the purpose of Section 196 of I.P.C. and every Income Tax Authority is a court for the purpose of Section 195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in *Rajesh Kumar's* case (*supra*), but having held that when civil consequences ensue, no distinction between quasi judicial and administrative

order survives, we deem it unnecessary to dilate on the scope of Section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see: *Mrs. Maneka Gandhi Vs. Union of India & Anr.* and *S.L. Kapoor Vs. Jagmohan & Ors.*)

29. Their Lordships of the Supreme Court in *Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa*, have held that arbitrary or unreasonable State action and gross violation of principles of natural justice violates Article 14 of the Constitution of India. Their Lordships have further held that the purpose of the principles of natural justice is prevention of miscarriage of justice and hence, the observance thereof is the pragmatic requirement of fair play in action. Their Lordships have finally concluded that the action taken without complying the principles of natural justice is a nullity.

34. Appellant, as noticed hereinbefore, is a State within the meaning of Article 12 of the Constitution of India. If an act on its part is found to be wholly unreasonable or arbitrary, the same would be violative of Article 14 of the Constitution of India. In certain situations, even gross violation of the principles of natural justice has been held to come within the ambit of Article 14. {See also *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, , *Union of India and Another Vs. Tulsiram Patel and Others*, , *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*,

35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In *A.R. Antulay (supra)*, this Court held:

No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity.

47. The purpose of principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement of fair play in action. {See *Sawai Singh Vs. State of Rajasthan*, , *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*,

30. Their Lordships of the Hon"ble Supreme Court in *Union of India (UOI) and Another Vs. P.N. Natarajan and Others*, have held that the retiral benefits payable to respondents could not have been revised to their disadvantage without giving them action-oriented notice and opportunity of hearing. Their Lordships have held as under:

11. At the commencement of arguments, Shri A.K. Srivastava, learned counsel

for the appellants referred to the order dated 17-9-2009 Employees State Insurance Corporation Vs. Bhakra Beas Management Board and Another, passed by this Court and suggested that disposal of these appeals may be deferred and liberty may be given to the competent authority to pass fresh order in the matter of retiral benefits payable to the respondents after giving them notice and opportunity to make representation, but having found that the Court is not inclined to approve the mechanism of post-decisional hearing, the learned counsel submitted that the impugned orders are liable to be set aside because the learned Single Judge and the Division Bench of the High Court did not consider the plea of the appellants that in view of the bipartite settlement arrived at between the Unions of the employees and the management of the Corporation, the respondents are not entitled to the benefits of dearness relief on a par with the Central Government employees.

15. We have considered the respective submissions and carefully scrutinised the records. Although neither the learned Single Judge nor the Division Bench considered the issue of violation of the rules of natural justice, having given serious thought to the entire matter, we are convinced that the retiral benefits payable to the respondents could not be revised to their disadvantage without giving them action-oriented notice and opportunity of hearing. By virtue of the option exercised by them u/s 12A(4)(b) and consequential action taken by the competent authority to fix their pension, etc., the private respondents acquired a valuable right to accordingly receive the financial benefits and the same could not have been reduced without complying with one of the basic rules of natural justice that no one shall be condemned unheard. The rule of audi alteram partem has been treated as fundamental to the system established by rule of law and any action taken or order passed without complying with that rule is liable to be declared void- State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and Sayeedur Rehman Vs. The State of Bihar and Others,

16. It is not in dispute that before directing revision of the pension, etc. payable to the private respondents, the Central Government did not give them action-oriented notice and opportunity of showing cause against the proposed action. Therefore, it must be held that the direction given by the Central Government to revise the retiral benefits including the pension payable to the respondents was nullity.

31. The representations made by the petitioners have also not been considered by the respondent-Board. The post of Lineman is in feeder category for promotion to the post of Junior Engineer/Foreman. The promotion orders of the petitioners have attained finality after the dismissal of O.A. No. 103/2003 by the erstwhile Tribunal. The judgment rendered by the Tribunal has been over looked by the Board. The respondent-Board has not placed on record any tangible evidence to the effect that respective zones have given different dates of regularization as stated in Annexure P-8 dated 5.4.2007. Accordingly, in view of the analysis and discussions made hereinabove, all the petitions are allowed.

Annexure P-8 dated 5.4.2007 and Annexure RA-VII dated 4.1.2008 in CWP No. 3546/2010, Annexure RA-X in CWP No. 3622/2010, Annexure RA-X in CWP No. 4102/2010 and Annexure RA-VII in CWP No. 4106/2010, qua the petitioners, are quashed and set aside. Petitioners shall be deemed to have been regularized with effect from the dates they were promoted on ad hoc basis to the post of Lineman with all the consequential benefits. The respondent-Board is directed to draw fresh seniority list by counting the services rendered by the petitioners from the date of their initial promotion to the post of Lineman on ad hoc basis, within a period of eight weeks. Thereafter, petitioners shall be considered for promotion to the higher post on the basis of newly redrawn seniority list within a further period of eight weeks. Pending application(s), if any, also stand disposed of. No costs.