

(2014) 09 BOM CK 0238

In the Bombay High Court

Case No : Writ Petition No. 129 of 2014

Dy. Chief Executive Officer (Child Welfare) Zilla Parishad and
Others

APPELLANT

Vs

Ratan Eknath Gund

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15 — Constitution of India, 1950 - Article 311, 311(2) — Industrial Disputes Act, 1947 - Section 2(j), 2(s) — Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 3(5)

Citation : (2015) 6 ALLMR 680 : (2015) 6 BomCR 814 : (2015) 2 MhLj 616

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : S.T. Shelke, for the Appellant; P.V. Barde, for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.?Rule. Rule made returnable forthwith. Heard finally by consent of the parties. The petitioner is the Zilla Parishad, under whose aegis, the Integrated Child Development Scheme is operated. The respondent was an "Aanganwadi Sevika". This matter arises out of the termination of the respondent by an order dated 19/21st January, 2009 w.e.f. 19-1-2009, a complaint filed by her before the Labour Court, challenging her termination and the judgment of the Industrial Court, granting reinstatement with continuity and full backwages to the respondent.

2. The petitioners, being aggrieved by the impugned judgment of the Industrial Court dated 17-9-2013 in Revision ULP No. 76/2011, granting the respondent the relief of reinstatement with continuity and full backwages, has preferred this writ petition.

3. Mr. S.T. Shelke, appearing on behalf of the petitioners has summarized the facts of the case as under :--

"(a) The respondent employee joined service as "Aanganwadi Sevika" in 1990, at Jundarwadi (Takalimiya) in Rahuri Tahsil.

(b) There was a termination in 1994, which occurred on account of her frequent absenteeism, which was triggered off on account of personal and domestic problems.

(c) By a compromise between the respondent and the petitioners, she has withdrawn the complaint filed before the Labour Court and was reinstated on 10-5-1999 at Shindewasti, Takalimiya, Aanganwadi No. 200.

(d) There were complaints against the respondent from the villagers at the place where she was discharging her duties as an "Aanganwadi Sevika".

(e) By an order dated 19/21st January 2009, she was terminated from employment on account of misdeeds committed while in service. Her termination is w.e.f. 19-1-2009.

(f) The respondent filed complaint (ULP) No. 4/2009 before the Labour Court at Ahmednagar, challenging her said termination. By judgment and order dated 8-9-2011, her complaint was dismissed.

(g) She preferred revision ULP No. 76/2011 before the Industrial Court at Ahmednagar.

(h) By a judgment and order dated 3-11-2012, the revision was allowed.

(i) The petitioners challenged the said judgment of the Industrial Court by filing W.P. No. 1686/2013 before this Court, which was allowed on 24-6-2013 and the revision petition was remanded back to the Industrial Court for a proper adjudication.

(j) By judgment dated 17-9-2013, the Industrial Court allowed the revision petition, set aside the judgment of the Labour Court dated 08-9-2011 and granted the relief of reinstatement with continuity and full backwages to the respondent. Her complaint was thus allowed.

(k) The Industrial Court has interfered with the action of the petitioners only on the ground that the termination of the respondent was stigmatic and without conducting a domestic inquiry.

(l) Government Resolution dated 12-4-2007 has been specifically made applicable to the Zilla Parishad and the Aanganwadi Sevika (Karyakarti), Madatnis (Helper) and Mini Aanganwadi Karyakari. The object of the Government Resolution is to afford an opportunity of hearing to such lady employees before terminating their services.

(m) An honorarium is paid to such "Aanganwadi Sevika/Madatnis" and there has not been any wage or salary structure.

(n) The Aanganwadi Sevika cannot be termed to be a workman under section

2(s) of The Industrial Disputes Act, 1947 and under section 3(5) of The M.R.T.U. and P.U.L.P. Act.

(o) The Model Standing Order cannot be said to be applicable to such "Aanganwadi Sevika".

(p) Regular departmental inquiry is not required to be conducted into the allegations levelled upon an "Aanganwadi Sevika" as they are covered by the said Government Resolution dated 12-4-2007.

(q) An opportunity of hearing and an opportunity of improving her conduct was afforded to the respondent. Since she did not improve her conduct and since there were growing complaints against her, her services were terminated.

(r) It is not in dispute that her services were terminated on account of misdeeds/ misdemeanours.

(s) Reliance is placed upon the judgment of the Apex Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, to submit that an opportunity of hearing could be said to be an adequate opportunity since the respondent was heard before issuing the order of termination.

(t) The Industrial Court, within its limited revisional jurisdiction, has interfered with the findings on facts given by the Labour Court in its judgment.

(u) The Industrial Court has transgressed its limits and exercised jurisdiction not vested in it by Law.

(v) Principles of natural justice have been adequately complied with by the petitioners and the Industrial Court has lost sight of the same.

(w) The conclusion of the Industrial Court amounts to adopting a pedantic approach and rests mainly on technicalities.

(x) The Industrial Court has not scrutinized the case of the respondent on the touch stone of prejudice.

(y) The impugned judgment of the Industrial Court, therefore, deserves to be quashed and set aside."

4. Mr. P.V. Barde, learned Advocate appearing on behalf of the respondent has submitted as under :--

"(a) The impugned termination order is with retrospective effect and which is prohibited by Law.

(b) Issuing a letter intimating the respondent about the complaints, cannot be said to be in full compliance of the principles of natural justice.

(c) Clause No. 2 of the Government Resolution dated 12-4-2007, empowering the petitioners to terminate the services of the respondent with immediate effect, does not stand the test of principles of natural justice.

- (d) There was no inquiry conducted against the respondent.
- (e) No charge-sheet was issued to the respondent so as to suggest that an opportunity of hearing was given to her.
- (f) The petitioners have wholly relied upon the Government Resolution dated 12-4-2007 and have given a go-by to settled principles of Law.
- (g) Impugned order is against all tenets of Law.
- (h) It has been crystallized that the project operated by the petitioners is covered by the definition of Industry under section 2(j) of the Industrial Disputes Act, 1947 and an "Aanganwadi Madatnis" is held to be a workman under section 2(s) of The Industrial Disputes Act, by this Court in 2 judgments delivered by the Division Bench in the case of *Sau. Vidya Vanare Vs. The State of Maharashtra and The Zilla Parishad Buldhana*, and the unreported judgment of the Division Bench of this Court in the case of *Mahananda W/o. Anurath Bhosale v. The Chief Executive Officer, Z. P., Osmanabad* in Writ Petition No. 521/2006 by judgment dated 14-7-2011.
- (i) The issue as regards the "Aanganwadi Sevika", being a workman, is no longer res integra.
- (j) The cross examination of the petitioners' witness clearly indicates that he was not appointed as an "Enquiry Officer".
- (k) No charge sheet was served on the respondents, the statements of the complainant that he had collected (not personally) were never supplied to the respondent.
- (l) No statement of any witness was recorded.
- (m) The respondent was not given an opportunity of cross-examining any person or witness and the documents which form the basis of his report were also not supplied to the respondent.
- (n) The respondent had made a statement in her deposition before the Labour Court that she was not gainfully employed despite an attempt to search for employment, which had led the Industrial Court to grant full backwages to the respondent.
- (o) It is prayed that the petition be dismissed with costs."

5. So far as the issue of termination with retrospective effect is concerned, the Division Bench of this Court in the case of *Sri Assaram Raibhah Dhage Vs. Executive Engineer and others*, , has settled the issue. The termination with retrospective effect has been held to be unforeseen in Law notwithstanding whether an employee is permanent or a temporary.

6. The impugned order appears to be dated 19-1-2009. The said date is written in handwriting. The effect of termination is given immediately and therefore the

respondent is held to be terminated from 19-1-2009. Below the date, the figure 21 indicating 21-1-2009 has also been written. There appears to be a procedural delay. In view of the conclusions that I am arriving at in this judgment, I would not go into the allegation of termination with retrospective effect.

7. The Division Bench of this Court in the case of *Sau. Vidya (supra)* has dealt with the objectives of the Integrated Child Development Services Scheme, which was launched in the year 1975. The objectives of the scheme and the services sought to be offered, are reproduced from paragraph Nos. 4 to 7 in the said judgment. It would be of assistance to reproduce the same paragraphs in this judgment as follows :

"4. Having heard learned Counsel for the petitioner and Ku. K.K. Pathak, appointed by this Court as "Amicus Curiae", we find that Integrated Child Development Services Scheme (hereinafter referred to as "ICDS Scheme") was launched in the year 1975 with the following objectives and services to be given.

"OBJECTIVES :- The Integrated Child Development Services (ICDS) Scheme was launched in 1975 with the following objectives :

- i. to improve the nutritional and health status of children in the age-group 0-6 years;
- ii. to lay the foundation for proper psychological, physical and social development of the child;
- iii. to reduce the incidence of mortality, morbidity, malnutrition and school dropout;
- iv. to achieve effective coordination of policy and implementation amongst the various departments to promote child development; and
- v. to enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

SERVICES :- The above objectives are sought to be achieved through a package of services comprising :

- i. supplementary nutrition,
- ii. immunization,
- iii. health checkup,
- iv. referral services,
- v. preschool non-formal education, and vi. nutrition and health education.

Three of the six services namely Immunisation, Health Checkup and Referral Services delivered through Public Health Infrastructure under the Ministry of Health and Family Welfare."

5. The constitution of ICDS Team is as under:

"THE ICDS TEAM :- The ICDS team comprises the Aanganwadi Workers, Aanganwadi Helpers, Supervisors, Child Development Project Officers (CDPOs) and District Programme Officers (DPOs). Aanganwadi Worker, a lady selected from the local community, is a community based frontline honorary worker of the ICDS Programme. She is also an agent of social change, mobilizing community support for better care of young children, girls and women. Besides, the medical officers, Auxiliary Nurse Midwife (ANM) and Accredited Social Health Activist (ASHA) form a team with the ICDS functionaries to achieve convergence of different services."

6. The status of Aanganwadi workers and helpers is as under :

"STATUS OF AANGANWADI WORKERS AND HELPERS.- Aanganwadi Workers (AWWs) and Aanganwadi Helpers (AWHs), being honorary workers, are paid a monthly honoraria as decided by the Government from time to time. Government of India has enhanced the honoraria of these Workers, w.e.f 1-4-2008 by Rs. 500 above the last honorarium drawn by Aanganwadi Workers (AWWs) and by Rs. 250 of the last honorarium drawn by Helpers of AWCs and Workers of Mini-AWCs. Prior to enhancement, AWWs were being paid a monthly honoraria ranging from Rs. 938/- to Rs. 1063/- per month depending on their educational qualifications and experience. Similarly, AWHs were being paid monthly honoraria of Rs. 500/- In addition to the honoraria paid by the Government of India, many States/UTs are also giving monetary incentives to these workers out of their own resources for additional functions assigned under other Schemes."

7. Role and responsibilities of Aanganwadi workers and helpers are as follows:

"Role and responsibilities of AWWs

- i. To elicit community support and participation in running the programme.
- ii. To weigh each child every month, record the weight graphically on the growth card, use referral card for referring cases of mothers/children to the sub-centres/ PHC etc., and maintain child cards for children below 6 years and produce these cards before visiting medical and paramedical personnel.
- iii. To carry out a quick survey of all the families, especially mothers and children in those families in their respective area of work once in a year.
- iv. To organise non-formal preschool activities in the anganwadi of children in the age group 36 years of age and to help in designing and making of toys and play equipment of indigenous origin for use in anganwadi.
- v. To organise supplementary nutrition feeding for children (0-6 years) and expectant and nursing mothers by planning the menu based on locally available food and local recipes.
- vi. To provide health and nutrition education and counselling on breastfeeding/

Infant and young feeding practices to mothers. Aanganwadi Workers, being close to the local community, can motivate married women to adopt family planning/birth control measures.

vii. AWWs shall share the information relating to births that took place during the month with the Panchayat Secretary/Gram Sabha Sewak/ANM whoever has been notified as Registrar/Sub Registrar of Births and Deaths in her village.

viii. To make home visits for educating parents to enable mothers to plan an effective role in the child's growth and development with special emphasis on new born child.

ix. To maintain files and records as prescribed.

x. To assist the PHC staff in the implementation of health component of the programme viz. immunisation, health checkup, ante natal and post natal check etc.

xi. To assist ANM in the administration of IFA and Vitamin A by keeping stock of the two medicines in the Centre without maintaining stock register as it would add to her administrative work which would effect her main functions under the scheme.

xii. To share information collected under ICDS Scheme with the ANM. However, ANM will not solely rely upon the information obtained from the records of AWW.

xiii. To bring to the notice of the Supervisors/CDPO any development in the village which requires their attention and intervention, particularly in regard to the work of the coordinating arrangements with different departments.

xiv. To maintain liaison with other institutions (Mahila Mandals) and involve lady school teachers and girls of the primary/middle schools in the village which have relevance to her functions.

xv. To guide Accredited Social Health Activists (ASHA) engaged under National Rural Health Mission in the delivery of health care services and maintenance of records under the ICDS Scheme.

xvi. To assist in implementation of Kishori Shakti Yojana (KSY) and motivate and educate the adolescent girls and their parents and community in general by organizing social awareness programmes/campaigns etc.

xvii. AWW would also assist in implementation of Nutrition Programme for Adolescent Girls (NPAG) as per the guidelines of the Scheme and maintain such record as prescribed under the NPAG.

xviii. Aanganwadi Worker can function as depot holder for RCH Kit/contraceptives and disposable delivery kits. However, actual distribution of delivery kits or administration of drugs, other than OTC (Over the Counter) drugs would actually be carried out by the ANM or ASHA as decided by the Ministry of Health and Family Welfare.

xix. To identify the disability among children during her home visits and refer the case immediately to the nearest PHC or District Disability Rehabilitation Centre.

xx. To support in organizing Pulse Polio Immunization (PPI) drives.

xxi. To inform the ANM in case of emergency cases like diarrhea, cholera etc.

Role and responsibilities of Aanganwadi Helpers

(i) To cook and serve the food to children and marchers.

(ii) To clean the Aanganwadi premises daily and fetching water.

(iii) Cleanliness of small children.

(iv) To bring small children collecting from the village to the Aanganwadi."

8. The Division Bench in the case of *Sau. Vidya (supra)*, has then concluded in paragraph Nos. 8, 9, and 10 that the "Aanganwadi Sevika" and "Aanganwadi Helper" are "workman" within the meaning of section 2(s) of The Industrial Disputes Act, 1947. It was also held that the services provided under the said scheme by the petitioners was within the definition of "Industry" under section 2(j) of The Industrial Disputes Act, 1947. It was held to be a systematic activity in which there was a co-operation between the employer and the employee. It was also concluded that the functions performed under the Integrated Child Development Scheme do not fall within the meaning of term "Sovereign Function" as has been explained in the judgment of the Apex Court in the case of *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, .

9. Reliance was also placed upon the judgment of the Apex Court in the case of *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and the *State of Karnataka and Others Vs. Ameerbi and Others*, , by this Court while deciding *Sau. Vidya W/o. Vishnu Vanare's* case (*supra*). Paragraph Nos. 8, 9 and 10 would assist in resolving the controversy in this petition. The said paragraphs read thus :

"8. Looking to the above functions of these Aanganwadi Sevikas and workers, prescribed by the Government and the very scheme which is in vogue since 1975 and the activities under the said scheme, we are of the view that the Aanganwadi Sevikas and Aanganwadi helpers and in particular the present petitioner are "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947 and the scheme under which they are performing their work, nature of which has already been given by us above is nothing but an "industry" within the meaning of definition of "industry" as per section 2(j) of the Industrial Disputes Act, 1947. We have no doubt that ICDS Scheme is systematic activity in which there is a co-operation between employer and employee. We also find that the said function under the ICDS Scheme does not fall within the meaning of the term "sovereign function" as explained by the Hon"ble Supreme Court in the case of *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, .

In the said decision in the case of Bangalore Water Supply and Sewerage Board (supra) the case of The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, was considered. We have therefore no doubt that the petitioner is a "workman" and the establishment in which she has been working under respondent No. 2 Zilla Parishad, namely, ICDS Scheme is an "industry".

9. In the case of State of Karnataka and Others Vs. Ameerbi and Others, , the Hon"ble Supreme Court has held that Aanganwadi workers under the said ICDS Scheme are not the holders of any civil posts and it is in that background the Hon"ble Supreme Court held that the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 will not have jurisdiction to entertain application under the said Act. Thus, from this judgment, it is clear that the Administrative Tribunal has no jurisdiction to entertain application under section 15 of the Administrative Tribunals Act for any relief.

10. We are aware that the State of Maharashtra has established Labour and Industrial Courts in each District in the State, pursuant to its policy to reach the justice at the door steps of the litigants with the object of saving the expenditure of the poor litigants coming to the High Court directly. As earlier stated by us, honorarium received by Aanganwadi workers or Aanganwadi helpers is hardly ranging from Rs. 1,000/- to Rs. 1200/- and therefore, there is no reason why such poor workmen should rush to this Court instead of availing effective alternate remedy which is available more speedily under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. We also would like to add that the pendency of the cases in the Labour and Industrial Courts in the State of Maharashtra and in particular in the areas other than Mumbai and Greater Mumbai has considerably reduced in the recent point of time and therefore, there is every hope of getting expeditious disposal of the cases. In view of the aforesaid alternate remedy and in view of the fact that the petitioner alike Aanganwadi Sevikas and Aanganwadi helpers get honorarium ranging from Rs. 1,000/- to Rs. 1200/- per month, we hold that the petitioner has a remedy to approach the Industrial Court in her District for implementation of the said Government Resolution dated 12-3-2008. We also hold that the remedy of approaching the Labour Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in case of termination being available, this Court would not entertain the writ petition in its extraordinary jurisdiction particularly when the said effective alternate remedy is available."

10. The Division Bench of this Court has dealt with a similar situation in the case of Smt. Mahananda W/o. Anurath Bhosale (supra). Once again, the objectives of the ICDS Scheme were considered in the light of the order of termination issued to Smt. Mahananda, from paragraphs Nos. 5 to 9. The Division Bench has considered the case of termination from all angles and has arrived at conclusions in the said paragraphs as under :

"5. A writ petition is not the proper remedy available for redressal of the

petitioner's grievance, in view of the judgment of the Division Bench in the case of *Sau. Vidya Vanare Vs. The State of Maharashtra and The Zilla Parishad Buldhana*, . The Division Bench has held that an Aanganwadi Karykarti is a workman as defined under section 2(s) of the Industrial Disputes Act, 1947. However, we have heard this petition finally on merit, since rule has been issued in the year 2007. In our opinion, it would not be proper to relegate the petitioner to the remedy available under the Industrial Disputes Act, 1947 or Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU and PULP Act"), at this stage.

6. The learned counsel for the petitioner has placed reliance on the judgment of the Madhya Pradesh High Court in the case of *Shashi Prabha Trivedi v. State of M.P.*, 2001(90) FLR 455, in support of his submission that an Aanganwadi worker is entitled to the protection under Article 311(2) of the Constitution of India. The learned counsel further submitted that the services of the petitioner could not have been terminated without holding a departmental enquiry against her. He submitted that the petitioner had no opportunity to defend herself against the false allegations levelled against her and, therefore, there was a breach of the principles of natural justice.

7. We have perused the impugned order, and we are of the opinion that it deserves to be set aside. The impugned order indicates that it is a punitive in nature and, therefore, ought to have preceded by an enquiry.

8. The submission of Mr. Jadhvar, the learned counsel for the petitioner, is that the judgment of the Madhya Pradesh High Court in *Shashi Prabha Trivedi (supra)* wherein it has been held that the benefit of Article 311(2) of the Constitution of India would be applicable to Aanganwadi workers, is squarely applicable to the present case. With respect, we are unable to agree with the view of the Madhya Pradesh High Court in this regard. It is not possible to conclude that because the ICDS is a scheme run by the Central Government, the persons working for the scheme would be civil servants and that consequently their services can be terminated only in accordance with Article 311 of the Constitution. As we have already mentioned, the Division Bench of our High Court in the case of *Vidya Vanare (supra)* has held that the Aanganwadi helper appointed in the ICDS, is a workman within the meaning of section 2(s) of the Industrial Disputes Act. The Court has considered the duties and functions of the Aanganwadi Sevikas and has held that the ICDS is a systematic activity in which there is co-operation between the employer and the employee. It has relied on the decision of the Supreme Court in the case of *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, and held that the ICDS is not a sovereign function of the State and, therefore, is an industry within the meaning of section 2(j) of the Industrial Disputes Act. It has also held that in view of the decision of the Supreme Court in the case of *State of Karnataka and Others Vs. Ameerbi and Others*, , the Aanganwadi workers do not hold any civil post and, therefore, would not be governed by the Administrative Tribunals Act. Consequently, the

submission of Mr. Jadhvar that such workers would be governed by Article 311(2) of the Constitution of India, is without merit.

9. However, as we have already noted, there has been breach of the principles of natural justice and fairplay, which are the sine qua non to be observed while terminating the services of an employee. Admittedly, the employee i.e. the petitioner herein, has not been terminated for any other reason, but that which is mentioned in the impugned order dated 30-8-2005. It is apparent from the pleadings before us that although the order impugned appears to be innocuous, it has been issued as a consequence of the show cause notice and other letters issued to the petitioner, earlier. In fact, this is borne out from the affidavits filed in reply to the petition, on behalf of the Chief Executive Officer."

11. In the instant case, it is not in dispute that the termination meted out to the respondent was stigmatic and was on account of misconducts. It is also not in dispute that the petitioners are under a firm belief that the misconducts committed by the respondent have been proved and she deserves to be terminated from employment by virtue of Clause II of the Government Resolution dated 12-4-2007. The petitioners have, therefore, not shied away from this stand taken and continue to hold that the respondent is an employee, who does not deserve to be kept in employment on account of the misconducts committed and in view of the fact that the petitioners have lost confidence in her services.

12. Gist of the Government Resolution dated 12-4-2007 is as under :--

"Clause 3(i) of the said Government Resolution provides for issuance of a show cause notice to the concerned Aanganwadi Karyakarti/Madatnis. Her explanation is to be taken into account while giving her an opportunity to improve her conduct.

By clause 3(ii) of the said Government Resolution, the said Aanganwadi Karyakarti/Madatnis can be terminated forthwith. Apparently, there is no provision to conduct a domestic enquiry in the event any misconduct is alleged to be committed by the said employee."

13. In the judgment of State Bank of Patiala (supra), cited by the petitioners, the Apex Court has evolved certain basic principles of natural justice keeping in view the concept of disciplinary enquiries and the orders of punishments to be imposed by employers upon delinquent and errant employees. While dealing with the same, the Apex Court has deduced certain conclusions as regards adherence to the principles of natural justice, allegations of violation of such principles, distinction between the opportunity of hearing and adequate opportunity of hearing etc.

14. The said principles, as laid down, are germane to the outcome of this case. I, therefore, find it appropriate to reproduce the said principles herein below:--

"(1) An order passed imposing a punishment on an employee consequent upon a

disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the

said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same viz., test of prejudice or the test fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/ Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem.. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

15. In the light of the State Bank of Patiala and others (supra), Mr. Shelke, learned Advocate for the petitioners has vehemently contended that the present case of the respondent would fall under the concept of a "fair hearing" given to her and opportunity to explain her conduct on the "touch stone of prejudice". He, therefore, submits that the first 2 aspects have been adequately complied with by the petitioners in light of clause 2 of the Government Resolution dated

12-4-2007. To the extent of the 3rd aspect, he submits that respondent was unable to explain away the charges levelled upon her, notwithstanding the fact that specific clauses from any standing orders were not mentioned. He hastens to clarify that neither the Model Standing Orders are applicable to the case of the petitioners, nor can the respondent claim to be covered by the effect of Article 311 of the Constitution of India.

16. It is, therefore, submitted that in these peculiar facts of the case, it only needs to be appreciated as to whether the petitioners had any intention to comply with the principles of natural justice and as to whether the petitioners desired to hear the respondent. According to him, the petitioners have complied with both of these requirements. He, therefore, submits that the misdeeds committed by the respondent were proved in the sense that the conscience of the petitioners was satisfied in concluding that the respondent was guilty of the misdeeds alleged against her.

17. I am unable to accept these submissions of the petitioners for reasons more than one. Once this Court has concluded in two judgments (by the Division Bench) that an "Aanganwadi Sevika" and "Madatnis" is a workman and the ICDS Scheme is an Industry, unless the petitioners have their own Service Rules made applicable to such workmen, the Industrial Employment (Standing Orders) Act of 1946 and the Model Standing Orders framed thereunder would become automatically applicable. The preamble of the said Act reads thus :

"An Act require employers in industrial establishments formally to define conditions of employment under them.

WHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

The Statement of Objects and Reasons are that - Experience has shown that "Standing Orders" defining the conditions of recruitment, discharge, disciplinary action, holidays, leave etc., go a long way towards minimising friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour conference revealed a consensus of opinion in favour of legislation. The Bill accordingly seeks to provide for the framing of "Standing Orders" in all industrial establishments employing one hundred or more workers.

In the first instance, the Act will apply to the categories of industrial establishments specified in clause (2)(e), which include, besides factories and railways, mines, quarries and oilfields, tramway or motor, omnibus services, docks, wharves and jetties, inland steam vessels, plantations and workshops. Government will be competent to extend the Act to other classes of industrial establishments or to grant exemptions where necessary, by notification.

Within six months from the date on which the Act becomes applicable to an

industrial establishment, the employer is required to frame draft "Standing Orders" and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules. The Certifying Officer will be empowered to modify or add to the draft Standing Orders so as to render them certifiable under the Act. It will not be his function (nor of the Appellate Authority) to adjudicate upon their fairness or reasonableness. There will be a right of appeal against the decisions of the Certifying Officers."

18. Needless to state, a disciplinary proceeding, which is capable of culminating into an order of dismissal from service, thereby resulting in civil death of an employee, is an extremely serious aspect of service jurisprudence. Neither can charges be held to be proved by mere inference without there being any evidence on record, nor can the employer's conscience be said to be satisfied purely on the basis of calling an explanation from an employee. Holding statements of villagers to her prejudice without an opportunity to contradict them, has resulted in a gross violation of principles of natural justice.

19. I find that in the instant case, in light of the admissions given by the witness of the petitioners before the Labour Court, not a single statement of any complainant villager was shown to the respondent. Statements recorded by the witness were not supplied to her. Documents, which form the basis and the foundation of the report of the witness, were also not offered to her. The witness admitted that he was never appointed as an Enquiry Officer and has confessed that his report led to the termination of the services of the respondent. These are damaging features so far as the case of the petitioners, is concerned.

20. In the State Bank of Patiala judgment, an inquiry was conducted but not in a manner as is normally expected by Law. It was, therefore, concluded that a punishment inflicted upon an employee, pursuant to disciplinary/departmental inquiry in violation of Rules governing such inquiries, should not be set aside mechanically, unless the contentions of the employee are tested on the touch stone of prejudice.

21. In my view, the facts emerging from the State Bank of Patiala Judgment (supra), are distinguishable vis-?-vis, the case on hand. However, I am in respectful agreement with the principles laid down in the judgment as reproduced hereinabove. The case of the petitioners when tested in the backdrop of these principles, fails the test. I am, therefore, convinced that this petition, to the extent of the contention of the petitioners that a reasonable and fair opportunity of hearing was given to the respondent, must fail.

22. In the case of State Bank of India and Others Vs. Ranjit Kumar Chakraborty and Another, , the Apex Court has concluded that a major penalty cannot be imposed by the Disciplinary Authority, without following the due procedure of Law. The issue is no longer res integra that charges levelled upon an employee, if ultimately lead to dismissal, ought to be proved by following the due procedure

of Law.

23. In the case of Amar Chakravarty and Others Vs. Maruti Suzuki India Ltd., , the Apex Court has reiterated that an employee need not prove his innocence in a domestic inquiry. The employer, who levels charges against an employee is under an obligation to prove the said charges.

24. The petitioners have contended that full backwages granted to the respondent were unjustified. The petitioner is a State Instrumentality and cannot be equated with any public sector or private sector undertaking. Unless it is conclusively proved that the respondent had made a strenuous effort to seek employment and could not succeed in her efforts to gain employment, she would not be entitled to the backwages. In the absence of the same, the backwages ought not to be granted, is the contention.

25. The respondent has relied upon the judgment of the Apex Court in the case of Novartis India Ltd. Vs. State of West Bengal and Others, . In the said judgment, the concerned employee was transferred and had declined to join the place of transfer. The employer presumed abandonment of service. It was held that the presumption of abandonment of service rests upon the charge of unauthorized absenteeism and unless such a charge was proved in a proper domestic inquiry, the contention of the employer would be rendered unsustainable. Backwages were granted to the said employee in such circumstances.

26. In the instant case, making a statement that the respondent was not gainfully employed despite attempts to seek an employment, may not be sufficient to sustain the conclusion of the grant of full backwages in favour of the respondent.

27. Nevertheless, once the order of termination is held to be illegal and bad in law, the illegality which has rendered the worker unemployed, has its own effects on the mind, body and soul of a workman. In the peculiar facts emerging from this case, I am of the view that it would be justifiable to soften and reduce the rigours of unemployment on the respondent, who is said to have been rendered a widow on account of the passing away of her husband. As such, payment of amount equivalent to 40% of the backwages upto the date of judgment of the Industrial Court, could compensate the respondent.

28. It is clear that the petitioners had not conducted a domestic inquiry as is required by Law. It was never comprehended by the petitioners that it was required to conduct a domestic inquiry as per the Model Standing Order in light of the conclusions drawn by the Division Bench of this Court in the above referred 2 judgments i.e. in the case of Sau Vidya Wanare and Mahananda Bhosale (supra). However, the respondent has been terminated for committing misconducts.

29. In my view, for such ignorance on the part of the petitioners, it would be

unusual to prevent the petitioners from not proceeding in accordance with Law against the respondent in the facts of this case. The petitioners have lost confidence in the Respondent. I am, therefore, of the view that the petitioners should be given an opportunity, to issue a charge-sheet in accordance with the Model Standing Orders against the respondent and proceed to conduct a domestic inquiry in accordance with the procedure laid down thereunder within a period of two months from today.

30. The issue of "doctrine of relation back", in my view, will have its application in the facts of this case. If the petitioners conduct a domestic inquiry against the respondent, the ultimate result of proving the charges shall be related back to the date of termination of the respondent. The amount awarded to the respondent, is to reduce the rigours of unemployment and litigation as she cannot be faulted for the incorrect procedure adopted by the petitioners.

31. In the event, the charges are held to be proved, the respondent shall have her own rights as against the petitioners. The petitioners shall be precluded from recovering this amount from the respondent. Needless to state, in the event the charges are not proved against the respondent, she shall stand to gain all service benefits, as are available in Law.

32. With these observations, till the employer petitioners complete the enquiry as per the Model Standing Orders, there shall be no reinstatement for the Respondent. However, it is clarified that if within two months, the petitioners do not initiate the domestic enquiry, it shall be concluded that they have acquiesced their right to conduct such an enquiry and the respondent shall then be entitled to reinstatement with continuity of service.

33. In the light of the above, the writ petition is partly allowed to the extent of depriving the respondent of 60% of the backwages and permit the petitioner to conduct an enquiry as per the Model Standing Orders. The petitioners shall refrain from delaying the completion of the enquiry. They shall endeavour to complete the same within three months from the date of receipt of her explanation to the charge-sheet. Rule is accordingly made partly absolute.