

(1977) 12 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 1018 of 1969

Guru Dayal Pershad

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 23-12-1977

Acts Referred:

Citation : (1979) ILR Delhi 507

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : R.L. Tandon, R.K. Bhagwani, Harsh Arora and R.K. Mehra, for the Appellant;

Judgement

S. Rangarajan, J.

(1) Dr. Gum Dayal Pershad, who has invoked the jurisdiction" of this Court under Articles 226 and 227 of the Constitution of India, has had to wait nearly for 4 years hoping the President of India to review his order dated 17-4-1965 terminating the Petitioner"s services w.e.f- 22nd May 1965 (the same having been served on 22-4^1965) and for nearing 8 years in this Court to get the relief which he seems to be entitled, even on purely legal grounds.

(2) The facts of this case are briefly stated: The petitioner holds a Masters Degree in Agricultural Science and two Ph.D. Degrees Ph.D. (Botany Iowa, U.S.A.) and Ph.D. (Genetics -IOWA, U.S.A.) besides being a Fellow of the Indian. Genetics Society. He was selected for appointment as Director of the Central Silkworm Seed Station, Srinagar w.e.f. 1-6-1962. The Silk Board is a public enterprise, a Statutory Corporation. It is common ground that he had been serving at the said Station on and from 1-6-1962 till the date of his termination which took place after he had been transferred to Mysore as Assistant Director of the Central Sericultural Research and Training Institute, Mysore; he had joined there on 28-4-1964 (A.N.). The memorandum dated 5-5-1962 (copy of which is Annexure R-I to the counter filed by the first respondent) informed him that he

had been selected for the said post of Director, Central Silkworm Seed Station, Srinagar on an initial pay of Rs. 700 per mensem in the scale pay of Rs. 700 40 1100 50/2 1250; in addition to pay, he would be entitled to draw such other allowances as were admissible to officers of Central Silk Board posted at Srinagar. The appointment was to be temporary; he would be on probation for a period of two years from the date he assumed charge of the post. The following portion of the Memorandum is important and may be quoted verbatim:

"During the period of probation he will not be eligible for Contributory Provident Fund of the Board and his appointment is terminable by one month's notice on either side" (emphases added).

(3) It is only necessary to note at this stage that his appointment was not terminated, as contemplated above by the clause permitting termination by giving one month's notice within the period of probation.

(4) According to the case of the respondents after the petitioner had completed his probation, he was informed by letter dated 27th June, 1964 issued under the signatures of the Chaiman, Central Silk Board (Shri G. Doraiswamy) for the first time that his "work" (not conduct) during the period of probation was not found satisfactory and that it had been decided to extend his period of probation for a further period of six months w.e.f. 1-6-1964- The petitioner sent a reply thereto dated 9-11-1964 (copy of which is Annexure at to the petitioner's rejoinder) specifically pointing out that he had completed two years service on 1-6-1964, and that at no time, during this period, had he been informed about any short-coming in his "work"; if there were any, they may be mentioned to him so that" he could make sincere efforts at self-improvement. There was no reply to this letter. But there was a further letter from the Secretary, Central Silk Board (Shri S. R. Ullal) dated 30-11-1964 (copy of which is Annexure Am to the petitioner's rejoinder) that his "work" during "the extended period of probation" was not satisfactory and that it had been decided "as a special case" to further extend the probationary period by six months w.e.f. 1-2-1964, in order to give him a "final chance" to show improvement in his "work". He was further informed that if he showed "no improvement" (obviously in his work) during the extended period of probation his services would be terminated as per terms of appointment, by giving one month's notice. To the above said communication dated 30-11-1964, also the petitioner sent a detailed reply (copy of which is Annexure An to his rejoinder) reiterating that he had never been informed about any short-coming in his work and for that reason could not take any step toward self- improvement; he was even unable to understand the expression "unsatisfactory work" in this context.

(5) It may be noticed even at this stage that no question of extending the probation period beyond two years could arise as per the terms of appointment, if it was purely on a contract basis, as it was sought to be contended before me on behalf of the respondent; it is implicit that if the contract was for two years (if it was a pure contract) the same was operative only for two years unless it was

extended by mutual consent; if no notice of termination of appointment could be given, as per that contract, by means of one month's notice after the expiration of the period of two years, he had continued beyond that period. Reference has been made to this aspect to emphasize that if the petitioner's probation was sought to be extended it could happen only under the statutory rules applicable to the petitioner but not as a matter of contract.

(6) Under the Silk Board Act, 1948 the Central Government was enabled to constitute a Board, to be called the Central Silk Board for the purpose of the said Act. The avowed purpose was to provide for the development of Silk Industry in this sub continent. It is common ground that the Central Civil Services (Conduct) Rules, 1965 and the Central Civil Services (Temporary Services) Rules, 1965, as amended from time to time, shall apply to the employees of the Central Silk Board, the relevant Silk Board Rules, made under the above Act, expressly providing for the same. Thus, the present case is governed by statutory rules. It is not a case which is governed by pure contract.

(7) Shri R. K. Mehra, learned counsel for the respondents, still vainly argued that action was taken only under the Contract Act and Therefore Article 226 of the Constitution could not apply to such a situation. When statutory rules apply to any person holding a civil post his service would be governed only by such rules; even if there was any offer of appointment on certain terms it would merge in the rules (vide *Roshan Lal Tandon Vs. Union of India (UOI)*,). There can be no doubt in this case that the petitioner was holding a civil post as contemplated by Article 311 of the Constitution. Sanction was admittedly obtained from the President of India for petitioner's appointment; the statutory Rule 20(2) quoted above, which applies to his case. makes him the holder of a civil post.

(8) Once the petitioner held a civil post, the Central Civil Services (Temporary) Rules, 1955 became applicable to him in their entirety. It follows that in the matter of extending his probation and/or terminating his services after the initial probationary period was over not only the statutory rules but all instructions of the Home Ministry, to fill in the gap, became applicable to him; such instructions have statutory force and would have to be strictly followed.

(9) In *Hira Singh v. Union of India* 1970(4) S.L.R 2231 I had occasion to discuss the procedure concerning how confidential report and probation reports (they are separate) to be drawn up; I had referred to the relevant instructions of the Home Ministry in this regard : I observed as follows in paragraph 15 of the said judgment :

"It was admitted by Shri Rustom Mehta who appeared for the Union of India in answer to a specific question by me that no report concerning the probation of the petitioner was drawn up and that there were only entries made in the character roll, no adverse entry even there having been communicated to the petitioner. The necessity for writing such reports concerning an officer's probation, in addition to entries being made in his character rolls is well known;

the instructions of the Ministry of Home Affairs in this regard have been set out in volume II of the Compilation of the Fundamental and Supplementary Rules, 3rd Edition by S. Lakhi Singh Chaudry on page 12 to 14. The Home Ministry had specifically laid down in 1959 (page 14) that separate forms of report on the probationers should be devised as distinct from the usual confidential reports as both the reports are intended to serve different purposes. The confidential reports ought to be considered only when the occasion for such considerations arise. The probation reports which have been obviously to be written up promptly and without delay have to be sent to the supervising authority for concentrating on the special needs of probation and to decide whether the work and conduct of the officer during the period of probation is such as to warrant his further retention in service or not. I am wholly unable to understand how without even any probation report being drawn up concerning the petitioner his work during the period of probation was stated "to be unsatisfactory. I find that the impugned order reverting the petitioner to his original post, which admittedly carried lesser emoluments and a lesser rank, coupled with a stigma on his work during the period of probation, is one which deserves to be quashed. The said order is quashed accordingly."

(10) In this case also it is conceded that no confidential and/or probation report, as explained above, was drawn up before the petitioner completed two years of probation. In fact, as rightly complained by the petitioner, he had not even been told, prior to the communication concerning the first extension for six months, that his "work" was unsatisfactory. The above reply sent by the petitioner to the communication was ignored; nonetheless there was a second communication to the petitioner that his probation was extended for a further period of six months. It follows, Therefore, that the extension of probation was itself not in the manner contemplated by the statutory rules and the relevant instructions in the matter, which fill statutory gaps and, for that reason, having statutory force. It seems to me, that no attention was paid by any one concerned to this aspect of the matter.

(11) The next, and even more important, question for consideration is whether the order of termination in this case, which on its face does not indicate any stigma, was validly made? On this point the law appears to be well-settled. It is not necessary for the purpose of this case to be detained by the decisions pertaining to orders of compulsory retirement of persons, holding civil posts or even about the extent of the limits of locus penitentiarius, the Government can have in the matter of not proceeding with a disciplinary enquiry launched against the employee to enable an order of termination of a temporary employee without reasons being disclosed, being made. The discussion herein will, Therefore, be confined to cases which are nearly analogous to the present one if possible where, more specifically, a probationer was involved.

(12) It was held by A. N. Ray, J. (as he then was), speaking for the Supreme Court, in *K.H. Phadnis Vs. State of Maharashtra*, that Article 311 would cover the case of reversion of a temporary government servant to a substantive post by

way of punishment. It was pointed out in that case that it is only the substance of the order, not the form, that would be decisive. This case was cited and followed in a later decision of the Supreme Court where seven learned Judges participated; the question at issue was concerning a probationer. The specific question which arose for consideration was whether the termination of services was by way of punishment. The order was held to be illegal and, Therefore, set aside. A. N. Ray, CJ. in that case *Shamsher Singh v. State of Punjab & Anr.* 1974 (2) S.L.R. 701 observed as follows in paras 54 and 55 page 722 :

"54. No abstract proposition can be laid down that where the services of a probationer are terminated without laying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Art. 311(2) of the Constitution. 55. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation."

(13) The observations concerning whether there was any obligation of the concerned authority to consider whether the work of the probationer was satisfactory or not and whether he was suitable for the post or not bring out the idea clearly that if the termination was on the ground of "inefficiency" or any "similar reason" and such a view was formed without a proper enquiry and without reasonable opportunity being given to the person concerned it can in a given case, amount to removal from service within Article 311 of the Constitution.

(14) It was pointed out in *Shamsher Singh* that generally speaking even though an order is made terminating the services of the temporary servant-probationer in form which is unexceptionable Article 311 will be attracted if it is shown that the same was made following a report of his misconduct in other words implying a stigma. The previous decision of the Supreme Court in *The State of Bihar and Others Vs. Shiva Bhikshuk Mishra*, holding to the above effect was referred to with approval. In view of the legal position having been settled in the above said manner in *Shamsher Singh* it seems needless to refer to the earlier cases which have mostly been considered in the said decision.

(15) Shri R. K. Mehra contended, relying upon the decision in 1. I.N. Saksena Vs. State of Madhya Pradesh, , that the impugned order in this case not costing any stigma per se no research should be made to go behind that order to unearth the motive, if any, for passing that order. Wanchoo, J. (as he then was) was only pointing out that the secretariat files should not be scrutinised to find out whether any stigma was involved when the order did not per se disclose any stigma. But these observations, as the later decisions will make it clear, would not be applicable when not only the motive, but the foundation for the impugned action surfaces, without having to search for or probe in order to find the stigma. Shri Mehra, however, relied upon The State of U.P. v. Ram Chandra Trivedi 1976 (4) S.C.C. 53 where Jaswant Singh, J. spoke for the Supreme Court. The situation in that case was that a suit had been filed by a person holding a civil post temporarily whose services were terminated by an order, which itself did not contain any stigma. The suit had been dismissed not only by the trial but appellate court also. Nonetheless the High Court interfered by trying to probe into the correspondence in order to find out the fact whether the termination was itself due to some body else having impersonated the petitioner in an examination which the petitioner was required to take himself. Jaswant Singh, J. referred to S. 100 CPC which precludes interference with a finding of fact. The decision of Mathew, J. (speaking for the Supreme Court) in State of U.P. and Others Vs. Sughar Singh, was only distinguished. In that case the High Court had held, inter alia, that the impugned order in that case could not be explained, except on the basis of an adverse entry made earlier in the confidential files. It was opined by Jaswant Singh, J. that Sughar Singh did not have to consider whether the impugned reversion was contrary to the Article 311 of the Constitution and that it did not in any way conflict with what the Supreme Court had decided in cases arising under that Article.

(16) Shri R. L. Tandon, learned counsel for the petitioner, brings to my notice the fact that the observations in paragraph 24 of Ram Chandra Trivedi were to the effect that the High Court in that case had overlooked the observations made by the Supreme Court in 1. N. Saxena and that Saxena was a case of compulsory retirement. I do not think it is necessary to be detained by what Shri Tandon has brought to my notice in the view that cases of compulsory retirement are not exactly in point.

(17) On the question whether there is any need for making a probe concerning the motive/foundation for the impugned order in this case, it is material to note that is now known a fact which is not disputed that the termination of the petitioner's services was as a result of his superior (s) thinking that not only his "work" but "conduct" were not satisfactory (vide Annexure A to the petition, a communication dated November 15, 1967 from the Deputy Secretary (Tech.), Central Silk Board, to the District Employment Officer. Moradabad revealing the foundation of the impugned termination of petitioner's services).

(18) In Shamsher Singh A. N. Ray, C.J. referred to the following observations of

S. R. Das, C.J., speaking for the Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, :

"It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in *Shrinivas Ganesh v. Union of India (N)* (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then prima facie, the termination is not a punishment and carries with it no evil consequences and so art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government, may nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with."

A. N. Ray C.J. also explained the reason for the said distinction between motive and foundation in the following words :

"The reasoning why motive is said to be irrelevant is that it inheres in the state of mind which is not discernible. On the other hand, if termination is founded on misconduct it is objective and is manifest."

(19) The above mentioned communication from the Central Silk Board to the District Employment Officer, Moradabad dated 15-11-1967 specifically stated as follows :

"Dr. G. D. Pershad"s services had to be terminated as his work and conduct were found to be not satisfactory."

The said communication was signed by the Deputy Secretary (Tech.). It is of the first importance to notice that the termination, according to this communication was not for the reason that the petitioner was found unsuitable for the post he was holding, as Shri Mehra Sought to make during the hearing. I shall revert to this aspect later.

(20) The fact of the said communication having been sent has not been controverted, it has only been stated that it was sent by way of reply to an enquiry made by the District Employment Officer. But this fact seems to have no bearing at all upon the termination of the petitioner"s service having been the result, in point of fact, of his work and conduct not being considered satisfactory. This being the position it is worth-repeating that it has now surfaced without any need for any probe into it the only further question is whether the petitioner is entitled to rely upon the said communication or not. On this aspect the petitioner

is supported by no less than three decisions of the Supreme Court.

(1) In *Sukhbans Singh v. The State of Punjab* 1962 (69) P.L.R. 1008 Madholkar, J. (10), speaking for the Supreme Court, observed in paragraph 13 at page 1013 as follows : "Though no reasons were stated at that time, on September 18, 1953, that is, a" year and half after the reversion he received the warning from the Government, which we have already quoted. The only reasonable inference which can be drawn from all these facts is that the Government in fact wanted to punish him for what it thought was misconduct on his part and, Therefore, reverted him. The omission of the Government to give reasons for his reversion does not make the action any the less a punishment but as the requirements of Art. 311(2) were not fulfilled, as they ought to have been, the Government wanted to give the reversion the appearance of an act done in the ordinary course entailing no penal consequences. The circumstances clearly show that the action of the Government was bona fide and the reversion was by way of punishment for misconduct without complying with the provisions of Art. 311(2). The reversion of the appellant is, Therefore, illegal." (2) In *Madan Mohan Prasad v. State of Bihar* 1973 (1) S.L.R. 630 (II) the factual position concerning the termination of the employment in that case was that the impugned order itself did not contain any stigma; the stigma surfaced in the Chief Minister's statement in the Assembly to the effect that the employee's work was not satisfactory. Sikri, C.J., speaking for the Supreme Court, pointed out that it was permissible for the Court to take into account the Chief Minister's statement relating to the termination of the employee's services in that case; the public was apt to believe that his services had been terminated on account of inefficiency or misconduct which, according to the Chief Justice, meant stigma. In the case on hand, it is worth emphasising by way of repetition that the above communication shows unmistakably that the reason for termination was the fact of not only the petitioner's "work" but his "conduct" also being found to be "not satisfactory". (3) In *Sughar Singh* the Standing Counsel for the State submitted before the Supreme Court that the foundation of the reversion was an adverse entry made in the character roll; even this would ensure to the benefit of the terminated employee and was sufficient for granting him relief.

(21) It is hence clear that the petitioner's services, which were admittedly terminated without any enquiry, were terminated for the reason that not only his "work" but also "conduct" were found to be "not satisfactory". It was not merely the motive but also the foundation for the impugned order as one can clearly make out from the communication to the District Employment Officer. The petitioner, according to his own averments, which have not been shown to be false, has been prejudiced not only by reason or his services having been terminated in the aforesaid manner but the same being also communicated to an officer on whom the petitioner had to rely for getting employment. The petitioner has referred to this feature in para 4 of the petition and para 6(b.) of his Rejoinder to first respondent's counter affidavit.

(22) The petitioner, Therefore, is entitled to claim the protection of Article 311(2) of the Constitution. The impugned order of termination has to be and is hereby quashed.

(23) I have studiously avoided reference to the merits of the controversy : whether the petitioner's work and conduct were satisfactory or not. There would be even less need to be concerned about the petitioner's conduct to which no reference had been made even in any of the departmental communications to the petitioner; in any view of the matter the petitioner's services could not at all be terminated for "conduct" not found to be satisfactory without a proper enquiry.

(24) Shri Mehra made a laboured attempt to show that this is really a case where the petitioner's services were terminated on account of his not being suitable for the post. It does not appear from the perusal of the reply filed by Respondent Nos. 1 and 2 that such a stand has been expressly taken. It would not, in the very nature of the situation, be possible for the respondents to take such stand, the District Employment Officer having been told not that the petitioner was not suitable for the post but that his work and conduct were not satisfactory. It was not legally permissible to terminate the services of the petitioner on both. or on any of these grounds without a regular and proper enquiry. It is not permissible for this Court to go into the question whether his work and/or conduct was/were satisfactory or not in the absence of such enquiry.

(25) Though I have held in favor of the petitioner on legal grounds alone, it seems to me that it may be rewarding from the point of view of management of public enterprises for the authorities to make a further probe in the affairs of the Silk Board how it had been managed both at Mysore and Kashmir. In particular, it may be rewarding to find out how persons with high technical qualifications are being utilised and treated by those, with perhaps less, placed above. One cannot fail to ignore the grievances, often publicly expressed, of highly qualified persons not finding suitable or conducive atmosphere for work when they come back to their home country after securing high degrees with high hopes of giving off their best in the cause of their mother-land. This is surely not the first case of such person with such hopes becoming frustrated. It is quite possible that such highly qualified persons may have some temperamental defects and may not have the requisite administrative experience, but there are defects which may hopefully be eliminated; even where they exist, by suitable training and/or attention being paid to them with sympathy and tact but yet with firmness. Such (possible) management techniques seem to have been conspicuous in the present case only by their absence. The petitioner, for instance, asserted that he had sufficient background in Entomology and Zoology also. But it has been denied by the respondents; a suggestion, not very complimentary to the selectors (who seem to have been quite able men, whether they included a member of the Indian Civil Service, as debated before me), is that the petitioner was selected in spite of his not being a suitable candidate. Assuming that this was so (without of course conceding this fact, for too to concede it even without evidence to support it

would be obviously unfair to the selectors) elementary fairness to the petitioner would have required those above him in the hierarchy to have told him about it or at least to have merely terminated his probation at the end of two year period, for this reason alone. This not having been done one gets the impression that a reference was made to the petitioner not having background in Entomology and Zoology very unfairly to him and in order to buttress the termination of his services in the above manner. This impression of mine is fortified by the extension of the petitioner's probation, not merely once but twice, for a period of six months each time, without any reference to the alleged lack of such background and on the ground of his "work" (even then not conduct) not being satisfactory. The greater is one's regret because the petitioner had been making assertions, in his several communications to his superiors, about his expertise in his field of work, his familiarity with the latest technical advances which led him to adopt the methods employed by him coupled with a request that the correctness and feasibility of his own approaches may, if needed, be referred to an appropriate technical committee, but no heed was paid; there was not even a reply to the petitioner on any of the points thus raised by him. The petitioner has also specifically stated that he had studied Zoology and Entomology as course requirements at the undergraduate and post-graduate levels. There has been, I am afraid, a rather rash denial of the above averment, on the basis of the petitioner's specialisation as furnished by him to the Counsel of Scientific and Industrial Research not expressly including these subjects. Not merely that, there has been a further assertion that the petitioner's claim concerning his background in Entomology and Zoology is "false". I do not see how this statement of the petitioner could be said to be false. without making "the necessary enquiry from the concerned University. The petitioner had himself suggested that such enquiry be made ; even though this petition has been pending for nearly eight years no effort has been made to file any further affidavit showing that the petitioner's statement in this respect is false. Shri Mehra could not say, even orally, that any enquiry had been made. I have referred to this feature alone, among others, that may also be properly borne in mind for bringing out the kind of treatment that has been meted out to him, for it seems sufficient for the present purpose. I would not have permitted myself to make the above observations but for my concern for the better functioning of Public Enterprises in India. In my study entitled "Public Corporations in India: Their Structuring and Legal Control" (Chapter 4 of Law and Public Enterprise in Asia : Praeger Publishers, New York, 1976) I have stated (p. 142) "Government's involvement with public undertakings requires the keenness and ability to find newer structures and devise needed legal controls". These efforts would at least take in periodic evaluations with their functioning, and style, of functioning of the enterprises aspects which still seem to be outside the effective purview of the Committee of Public Undertakings. Among the suggestions made by me is an Ombudsman for Public Enterprises : this may provide an adequate and needed machinery for redressal of grievances of the staff of such public enterprises. The present case, without doubt, highlights the need for such a

grievance-man.

(26) The petitioner waited for four years expecting redress at the hands of the President before he came to court. The petitioner was repeatedly told that his representations were receiving attention. The petitioner has outlined the various steps taken by him in paragraph 7 of his petition (running over four pages 19 to 22). It is sufficient here to refer to the reply, as late as 11-8-1969, stating that the matter was still under consideration and that further communication would follow as and when a decision was arrived at. Not getting relief the petitioner filed this Writ Petition in October, 1969. Even in this Court he has had to wait for eight years.

(27) Shri Mehra urged that the representations of the petitioner were not statutory and Therefore the petitioner was not entitled to rely upon them in answer to the plea of laches and delay by the respondents against the petitioner. The petitioner was not told that n,o such representations would lie. On this aspect the recent decision of the Supreme Court in Sualal Yadav Vs. The State of Rajasthan and Others, seems to be appropriate. In the decided case the appellant had filed an appeal on 12th October, 1964 and the same was dismissed on June 24, 1966. After that the appellant made a review application under Rule 34 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The application was entertained by the Governor and then an order was passed that it was not a fit case for review. A Writ Petition filed about 2 or 3 year? later was dismissed by the High Court upholding the preliminary objection taken by the State that the petitioner had been guilty of delay. The High Court observed that the review application in that case was made to the Governor after a lapse of two years, which was unreasonable according to the High Court. Goswami, J., speaking for the Supreme Court, pointed out that the High Court's approach was not correct because the Governor had not dismissed the review application on the ground of delay: on the other hand, he had entertained the same implying it to be a case not fit for review. There seems to be no force, Therefore, in the plea that the petitioner is not entitled to any relief because of delay or laches.

(28) I only wish to make it clear that the impact of this order upon the national exchequer has been considered by me; still the impugned order is quashed by me because it seems necessary to do so legally. But all this would be poor comfort for the petitioner after the harassment he has suffered for so long and for which he could not be really compensated. So far as the public (national) interest is concerned the Board has gone without his services for so long. Such a problem has surely to be solved from a dimension totally different from any known or adopted so far; the adversary process with all its limitations (delays being the chief of them) seems hardly a satisfying dispute resolution or grievance-handling device. The feasibility of my suggestion for an Ombudsman for Public Enterprises has to be considered in this light.

(29) It is hereby directed that the petitioner will be deemed to have continued in the aforesaid appointment despite the in impugned order of termination and he

would be entitled to his salary and other benefits which are permissible ; this is only a complete, full and necessary way of stating that the petitioner who has had to wait for so many years for getting the relief due to him, should be treated in nearly the same way in which he would have been if the impugned order had not been passed.

(30) The Writ Petition is accordingly accepted with costs. Counsel fee Rs. 500.00 .