
(1988) 10 MP CK 0035

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 37 of 1988

Kuldeep Singh and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-10-1988

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 15

Citation : (1989) MPLJ 343

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : M.A. Khan, for the Appellant; S.K. Pawnekar for State, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Adhikari, J.

The petitioner, who has been in employment of the respondent since 1949, seeks a writ in the nature of certiorari for quashing the order dated 8-6-1983 whereunder his services were terminated with the aid of Rule 41 of the Service Rules of the Company by payment of salary for three months, in lieu of notice, with immediate effect, in this petition under Article 226 of the Constitution of India, on the premises that the respondent is a "State" within the meaning of Article 12 of the Constitution of India and thus amenable to the writ jurisdiction of this Court. Further a declaration that Rule 41 of the Service Rules is repugnant to Articles 14 and 15 of the Constitution is also claimed.

Facts necessary to be stated are that the petitioner was recruited and appointed as Assistant in the Accounts Section on 10-12-1949 vide Annexure A and thereafter was promoted as an Accountant in the year 1956. The petitioner was further promoted as Assistant Import Officer vide Annexure "B" dated 14-5-1974 on which post he was confirmed on 14-11-1974 vide Annexure "C". Thus, the petitioner has put in more than 32 years of service and according to the

averments made in the petition, a letter of appreciation was issued to him on his completion of 25 years of unbroken service vide Annexure "D". It is further averred that on 8-6-1983, the petitioner received the order of termination of his services with immediate effect from Chairman-cum-Managing Director of the respondent in exercise of the powers conferred by Rule 41 of the Service Rules. However, according to the petitioner, no amount by way of salary for three months in lieu of the notice was received by him along with the order of termination, Annexure "E" though subsequently vide Annexure "F", he received the said amount on 11-6-1983 by cheque. According to the petitioner, this action of not remitting the salary for three months simultaneously along with the order of termination vitiates the said impugned order and therefore, deserves to be quashed on this ground alone. Reliance was placed on the decisions of the Supreme Court in Smt. Kusum Gupta alias Kusum Bansal Vs. Haryana State Small Industries and Export Corpn., Chandigarh, and Senior Superintendent, R.M.S., Cochin and another vs. K. V. Gopinath, Sorter, 1972 SLR 390. Further contention of the learned counsel for the petitioner is that the impugned order of termination has been passed as a result of a secret enquiry without affording the petitioner any opportunity to defend. This action on the part of the respondent being in complete violation of the principles of natural justice, the said order of termination cannot be sustained. Reliance was placed on a Full Bench decision of this Court in Bal Krishna Tiwari Vs. Registrar of Awadhesh Pratap Singh, University, Rewa and Others, and on two decisions of the Supreme Court in Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, and Ram and Shyam Company Vs. State of Haryana and Others, .

So far as the question as to whether the respondent is amenable to the extraordinary jurisdiction of this Court under Article 226 of the Constitution is concerned, it was submitted by the learned counsel for the petitioner that the respondent which is a government company u/s 617 of the Companies Act. 1956, is a "State" within the definition as contained in Article 12 of the Constitution since the Central Government has 78% of shares, while 15% is held by the State of Madhya Pradesh and the remaining 7% is held by other share holders. It was pointed out that the respondent which produces "Newsprint" is an essential commodity and its price is fixed by the Government. It was submitted that out of the total strength of the Board of Directors of nine directors, three are appointed by the Central Government and three are appointed by the State of Madhya Pradesh. Out of the three directors remaining one is a labour director while one of them is out of the other shareholders. The Chairman-cum-Managing Director is appointed by the President. Thus, the constitution of the Board of Directors shows that out of the total strength of nine directors, eight are appointed by the Government, thus retaining the administrative and financial control over the respondent. It was stated that every appointment carrying a higher pay scale more than Rs. 2,250/- is subject to the sanction of the President. It was also pointed out that the newsprint manufactured by the respondent has to be sold at a price fixed by the Central

Government under the direction and permission of the Registrar of Newspapers, which shows that the respondent is an instrumentality of the Government acting through its agencies. In support of his contention, the learned counsel placed reliance on the decisions of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Som Prakash Rekhi vs. Union of India and another, AIR 1981 SC 212, which has been relied upon by this Court in Officers' Association and others vs. Steel Authority of India, 1983 MPLJ 50.

In the return submitted on behalf of the respondent, a preliminary objection as regards the maintainability of the petition under Article 226 of the Constitution has been taken, stating inter alia that the respondent is a Government company incorporated u/s 617 of the Companies Act, 1956 and carries on the activities of manufacturing newsprint. It has been also stated that although the respondent is a Public Sector Undertaking in which the Central Government holds 78% of shares and the State Government holds 15% of the shares, the respondent/Company does not discharge any governmental functions nor is an instrumentality of the Government and hence is not a "State" within the meaning of Article 12 of the Constitution of India. Further, it is stated that the respondent/Company has not been constituted by any Act of State Legislature or the Parliament and thus is not a statutory authority. The learned counsel for the respondent contended that simply because majority of the shares are held by the Government, the respondent/Company does not become an instrumentality of the Government and the fact that the respondent/Company having been incorporated under the Companies Act, 1956 shows that the respondent/Company has a separate and distinct status. It was also contended that since the respondent/Company is governed by the provisions of the Companies Act, merely the appointments made by the State or the President, of the Directors on the Board of Directors, do not mean that the respondent/Company is an agency of the State. It was argued that the employment under the respondent/Company is regulated and governed by various enactments concerning Industrial employment and, therefore, the employees do not hold civil posts under the State as is understood under Articles 310 and 311 of the Constitution of India. In view of the above facts, it was submitted that the respondent/Company is not a "State" or "other authority" within the meaning of Article 12 of the Constitution. In this connection, learned counsel for the respondent referred to a decision of the Supreme Court in Som Prakash Rekhi's case (supra) and a decision of this Court in Officers' Association and others (supra) and urged that the respondent/Company does not fulfil any of the tests laid down for holding it to be a "State" within the meaning of Article 12 of the Constitution since the respondent/Company does not discharge or carry on any of the essential functions of a "State", nor does the respondent/Company exercise any legislative powers.

On merits, the learned counsel for the respondent submitted that the petition has been rendered infructuous since the petitioner has attained the age of superannuation on 31-1-1988. It was contended that the termination of the

service of the petitioner was due to the loss of confidence of the respondent/ Company in the petitioner. It was urged that the contract of employment cannot be enforced and all that the petitioner can claim is damages. Reliance was placed on a decision of the Supreme Court in the case of Sirsi Municipality (supra). It was also urged that no enquiry was necessary prior to the issuance of the impugned order of termination under Rule 41 of the Service Rules as applicable to the employees of the respondent. Under such circumstances, the action on the part of the respondent is legal and valid and no writ can be issued to respondent, it being a Company manufacturing newsprint as any other manufacturer. Reliance was placed on a decision of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .

We have considered the arguments advanced on behalf of the parties and perused the records. Two questions are required to be decided, namely, whether a writ could be issued to the respondent under Article 226 of the Constitution of India? The answer to this question would depend as to whether the respondent/ Company is a "State" or "other authority" within the meaning of Article 12 of the Constitution. And secondly, if it is so held, whether the order of termination could be quashed by issuing a writ in the nature of certiorari on the ground that service of the order of termination was not accompanied by salary for three months as envisaged by Rule 41 of the Service Rules and further whether the said impugned order of termination was issued as a consequence of a secret enquiry as admitted by the respondent/Company in its return, without affording opportunity to the petitioner and thus in violation of the principles of natural justice since the employees of the respondent/Company which is incorporated under the Companies Act, 1956 do not enjoy the protection available to Government servants as contemplated in Article 311 of the Constitution.

Taking the first question as to whether the respondent/Company is a "State" or "other authority" within the ambit of Article 12 of the Constitution, it may be stated that in a welfare State, commercial functions in combination with the governmental functions are undertaken by the State. The terms "State" and "other authorities" occurring in Article 12 of the Constitution of India comprehend bodies created for the purpose of promoting economic activities and such bodies may be statutory corporations, registered societies, government companies or other like entities. In pre-independent days, several industrial enterprises were set up in the princely States of Mysore and Hyderabad with public participation in equity. Soon after the independence, the Tatas pioneered government private sector participation when they created Air India International jointly with the Government of India. This concept of mixed economy was envisaged by the Industrial Policy Resolution of 1956 which classified all industries into three categories, namely Schedule "A" -- Industries being the exclusive responsibility of the State, Schedule "B" Industries being progressively State-owned and Schedule "C" industries left for the private sector. After the

Industrial Policy Resolution of 1956, a number of companies were floated by the Government of India in collaboration with private sector by sharing ownership, management and control. (See Indian Economy, Twenty fifth Revised Edition, 1988 by Ruddan Datt and K. P. M. Sundharam). The indicia of "other authorities..... under the control of....." occurring in Article 12 of the Constitution, the following factors determine whether a statutory corporation, a government company, a Co-operative Society and other registered society or body is "State" within the meaning of Article 12 as it is not confined to statutory corporations alone. The tests laid down in *Som Prakash Rekhi*'s case (supra) are as under:

- (a) if the entire share capital of the corporation is held by Government;
- (b) if there exists deep and pervasive control of Government;
- (c) if the entity enjoys monopoly status which is State conferred or State protected;
- (d) if the functions of the entity are of public importance and closely related to governmental functions; and
- (e) if the department of the Government is transferred to an entity

and thus any entity, be it a statutory corporation, a Government company as defined in Section 617 of the Companies Act or a Co-operative Society fulfilling any of the above conditions would be an instrumentality of or agency of Government.

In the case of *Central Inland Water Transport Corporations* case (supra), the Supreme Court in its exhaustive and monumental judgment has laid down that if there is an instrumentality or agency of the State which has assumed the garb of a Government company as defined in Section 617 of the Companies Act, 1956, it does not follow that it thereby ceases to be an instrumentality or agency of the State. For the purpose of Article 12 of the Constitution, one must necessarily see through the corporate veil to ascertain whether behind that veil, is the fact of an instrumentality or the agency of the State. It has been further laid down that the expression "State" when used in Parts III and IV of the Constitution is not confined to only the federating States or the Union of India or even to both since the definition given in Article 12 of the Constitution is not an explanatory and restrictive definition but an extensive definition and thus, would include,

- (a) the Government of India,
- (b) Parliament of India,
- (c) the Government of each of the States which constitutes the Union of India,
- (d) the Legislature of each of the States which constitutes the Union of India,
- (e) all local authorities within the territory of India,

- (f) all local authorities within the control of Government of India,
- (g) all other authorities within the territory of India, and
- (h) all other authorities under the control of Government of India.

In this case, the Central India Water Transport Corporation Ltd. was a Government company as defined in section 617 of the Companies Act, 1956. It was wholly owned by the Central Government and two State Governments jointly. It is financed by the Central Government and the two State Governments and is completely under the control of Central Government and is managed by the Chairman and the Board of Directors appointed by the Central Government and removable by it. It was, therefore, laid down that in every respect, it is thus, a veil behind which the Central Government operates through the instrumentality of a Government company. The activities carried on by the Corporation are of vital national importance and of great importance to the public interest, concern and welfare and these activities are of the nature carried on by a modern State and particularly a modern welfare State. Therefore, it is ridiculous to describe the Corporation as a trading company merely because the Corporation has a legal personality of its own and, therefore, it does not follow that the Corporation cannot be an agent or instrumentality of the State. The Corporation can be created either by Statute or incorporated under the law such as Companies Act, 1956 or the Societies Registration Act, 1860.

Applying the above tests and the principle enunciated by the Apex Court to the instant petition, it is admitted that the Central and the State Governments jointly hold 93% of the share capital in the respondent/Company. It is also admitted that out of the Directors of the Board of Directors, 8 are appointed by the Central and the State Governments. The activities of the respondent/company are thus controlled and managed by these two Governments, inasmuch as the day-to-day administration is carried out by the Chairman-cum-Managing Director appointed by the President. The financial powers are vested in the Chairman. The accounts of the respondent/company are audited by the Auditors appointed by the Government of India which are further checked by the Comptroller and Auditor General of India. For every appointment, carrying a higher pay scale than Rs. 2,250/- the sanction of the President is necessary while other appointments are made by the Chairman. The newsprint manufactured by the Company is sold under the direction and control of the Registrar of Newspapers at a price fixed by the Government of India. These facts are not controverted. It is perhaps, in view of this, that the respondent/company, in its return described itself as a public sector undertaking rather than a joint sector venture. Under these circumstances, therefore, this Court has no hesitation in recording a finding that the respondent/company is a "State" or "other authority" and comes within the ambit of Article 12 of the Constitution of India and is, therefore, amenable to the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Thus the preliminary objection raised on behalf of the respondent/company is rejected.

Coming to the question of validity of Rule 41 of the Service Rules of the respondent/company which is as under:

41. Termination of service at the instance of the company.

(1) The company may at any time terminate the services of an employee by giving him one month's previous written notice of such termination if the employee has been in continuous employment of the Company for a period of less than 5 years, and 3 months' previous written notice if he has been in continuous employment of the Company for a period of 5 years or more or by payment of salary for the period of notice, in lieu of such notice. Such notice shall begin to run from the day next after the day of service of the notice.

(2) If an employee leaves service during the period covered by the notice, he is entitled to pay only the period during which he worked.

(3) Probationers or temporary employees shall not be entitled to any notice of termination of service.

it may be stated that the petitioner admittedly has been in continuous employment of the respondent for a period more than five years and, therefore, the part of rules as applicable to him for the purpose of the termination of service is extracted below:

The Company may at any time terminate the service of an employee by giving him three months' previous written notice or by payment of salary for the period of notice, in lieu of such notice.

From the perusal of the above rule, it is clear that it confers upon the respondent/company the power to terminate the services of a permanent employee by giving him three months' notice in writing or in lieu thereof to pay him the salary of three months. It thus, confers absolute and arbitrary power upon the Company. There are no guidelines whatever laid down to indicate under which circumstances the power given by Rule 41, to the extent it is applicable to the petitioner (permanent employee) is to be exercised by the respondent/company. There is no opportunity of hearing the permanent employee whose services are to be terminated in exercise of the powers under this rule. The principles of natural justice are wholly excluded without any reason or justification. It may be stated that under certain circumstances, the rules of natural justice may be modified or even totally excluded but none of situations can be inferred from Rule 41 to the extent it is applicable to permanent employees of the respondent/company. It is a "hire and fire rule". It is admitted by the respondent in its return that it had conducted a secret enquiry prior to the issuance of the impugned order of termination. It, therefore, follows that the termination of the petitioner was not simpliciter. The charge which was enquired into by the Vigilance Officer at the instance of the Chairman-cum-Managing Director behind the back of the petitioner could have been very well established and proved against the petitioner in a departmental enquiry on hearing the petitioner, the

respondent resorted to the power under Rule 41 of the Service Rules of the respondent. No opportunity of hearing was afforded to the petitioner and the respondent passed the impugned order which prima facie shows arbitrariness and was thus unreasonable. The action ignores and sets aside the audi alteram partem rule and violates Article 14 of the Constitution. Such a rule also is void under the provisions of Section 23 of the Contract Act being against public policy. Similar rule as herein came up for consideration of the Supreme Court in the case of Central Inland Water Transport Corporation Ltd. (supra) and the Apex Court declared such a provision to be void u/s 23 of the Contract Act and has struck down being ultra vires Article 14 of the Constitution. The Supreme Court laid down that:

98. Rule 9(i) confers upon the Corporation the power to terminate the service of a permanent employee by giving him three months' notice in writing or in lieu thereof to pay him the equivalent of three months' basic pay and dearness allowance. A similar regulation framed by West Bengal State Electricity Board was described by this Court in West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, , (at p. 723 of AIR) as:

.... a naked "hire and fire rule", the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers.

As all lawyers may not be familiar with administrative law, we may as well explain that "the Henry VIII class" is a provision occasionally found in legislation conferring delegated legislative powers, giving the delegate the powers to amend the delegating Act in order to bring that Act into full operation or otherwise by Order to remove any difficulty, and at times giving power to modify the provisions of the other Act also. The Committee of Ministers' Powers in its report submitted in 1932 (and. 4060) pointed out that such a provision had been nicknamed "the Henry VIII class" because "that King is regarded popularly as the impersonation of executive authority". The Committee's Report (at page 61) criticised these clauses as a temptation to slipshod work in the preparation of bills and recommended that such provisions should be used only where they were justified before Parliament on compelling grounds. Legislation enacted by Parliament in the United Kingdom after 1932 does not show that this recommendation had any particular effect.

No apt description of Rule 9(i) can be given than to call it "the Henry VIII Clause". It confers absolute and arbitrary power upon the Corporation. It does not even state who on behalf of the Corporation is to exercise that power. It was submitted on behalf of the Appellants that it would be the Board of Directors. The impugned letters of termination, however, do not refer to any resolution or decision of the Board and even if they did, it would be irrelevant to the validity of Rule 9(i). There are no guidelines whatever laid down to indicate in what circumstances the power given by Rule 9(i) is to be exercised by the Corporation. No opportunity whatever of a hearing is at all to be afforded to the permanent

employee whose service is being terminated in the exercise of this power. It was urged that the Board of Directors would not exercise this power arbitrarily or capriciously as it consists of responsible and highly placed persons. This submission ignores the fact that however highly placed a person may be, he must necessarily possess human frailties. It also overlooks the well-known saying of Lord Acton, which has now almost become a maxim, in the Appendix to his "Historical Essays and Studies", that "power tends to corrupt, and absolute power corrupts absolutely". As we have pointed out earlier, the said Rules provide for four different modes in which the services of a permanent employee can be terminated earlier than his attaining the age of superannuation, namely Rule 9(i), Rule 9(ii), sub-clause (iv) of Clause (b) of Rule 36 read with Rule 38 and Rule 37. Under Rule 9(H) the termination of service is to be on the ground of "services no longer required in the interest of the Company". Sub-clause (iv) of Clause (v) of Rule 36 read with Rule 38 provides for dismissal on the ground of misconduct. Rule 37 provides for termination of services at any time without any notice if the employee is found guilty of any of the acts mentioned in that Rule. Rule 9(i) is the only Rule which does not state in what circumstances the power conferred by that Rule is to be exercised. Thus, even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry. It is free to resort instead to Rule 9(i) in order to avoid the hustle of an inquiry. Rule 9(i) thus confers an absolute, arbitrary and unguided power upon the Corporation. It violates one of the two great rules of natural justice -- the audi alteram partem rule. It is not only in cases to which Article 14 applies that the rules of natural justice come into play. As pointed out in *Union of India and Another Vs. Tulsiram Patel and Others*, . "The principles of natural justice are not the creation of Article 14, is not their begetter but their constitutional guardian." That case has traced in some detail the origin and development of the concept of principles of natural justice and of the audi alteram partem rule (at pages 463480 of (1985) 3 SCC 1451-1463 of AIR). They apply to diverse situations and not only to cases of State action. As pointed out by O. Chinnappa Reddy, J. in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, they are implicit in every decision making function, whether judicial or quasi-judicial or administrative. Undoubtedly, in certain circumstances the principles of natural justice can be modified and, in exceptional cases, can even be excluded as pointed out in *Tulsiram Patel's* case (supra). Rule 9(i), however, is not covered by any of the situations which would justify the total exclusion of the audi alteram partem rule.

The power conferred by Rule 9(i) is not only arbitrary but is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him clause (i) of Rule 9. It can pick up another employee and apply to him clause (ii) of Rule 9. It can pick up yet another employee and apply to him sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the

Corporation in holding under Rule 38 a regular disciplinary inquiry into the alleged misconduct of the employee. Both the contesting Respondents had, in fact, been asked to submit their explanation to the charges made against them. Sengupta had been informed that a disciplinary inquiry was proposed to be held in his case. The charges made against both the Respondents were such that a disciplinary inquiry could easily have been held. It was, however, not held but instead resort was held to Rule 9(i).

As the Corporation is "the State" within the meaning of Article 12, it was amenable to the writ jurisdiction of the High Court under Article 226. It is now well established that an instrumentality or agency of the State being "the State" under Article 12 of the Constitution is subject to the constitutional limitations, and its actions are State actions and must be judged in the light of the Fundamental Rights guaranteed by Part III of the Constitution (see for instance, *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, .* The actions of the instrumentality or agency of the State must, therefore, be in conformity with Article 14 of the Constitution. The progression of the judicial concept of Article 14 from a prohibition against discriminatory class legislation to an invalidating factor for any discriminatory or arbitrary State action has been traced in *Tulsiram Patel's* case (supra). The principles of natural justice have now come to be recognized as being a part of the Constitutional guarantee contained in Article 14. In *Tulsiram Patel's* case this Court said (at page 476 of SCC = at p. 1460 of AIR):

The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretations given by this Court to the concept of equality which is the subject matter of that Article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14 however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter.

As pointed out above, Rule 9(1) is both arbitrary and unreasonable and it also wholly ignores and sets aside the *audi alteram partem* rule it, therefore, violates Article 14 of the Constitution.

We would like to observe here that as the definition of the "State" in Article 12 is

for the purposes of both Part III and Part IV of the Constitution, State actions including actions of the instrumentalities and agencies of the State, must not only be in conformity with the Fundamental Rights guaranteed by Part III but must also be in accordance with the Directive Principles of State Policy prescribed by Part IV. Clause (a) of Article 39 provides that the State shall, in particular, direct its policy towards "securing that the citizens, men and women equally have the right to adequate means of livelihood." Article 41 requires the State, within the limits of its economic capacity and development, to make effective provisions for securing the right to work". An adequate means of livelihood cannot be secured to the citizens by taking away without any reason the means of livelihood. The mode of making "effective provision for securing the right to work" cannot be by giving employment to a person and then without any reason throwing him out of employment, The action of an instrumentality or agency of the State, if it frames a service rule such as clause (a) of Rule 9 or a rule analogous thereto would, therefore, not only be violative of Article 14 but would also be contrary to the Directive Principles of State Policy contained in clause (a) of Article 39 and in Article 41.

The matter, thus squarely stands covered by the aforesaid decision of the Supreme Court. This Court, therefore, declares the Rule 41 of the Service Rules to the extent it is applicable to permanent employee of the respondent/company to be void u/s 23 of the Contract Act and ultra vires Article 14 of the Constitution as well as contrary to Directive Principles of State Policy contained in clause (a) of Article 39 and Article 41 of the Constitution of India.

Even on merits, the petitioner has a strong case. The impugned order of termination dated 8-6-1983 (Annexure-E) was not an order terminating the services of the petitioner simpliciter. Behind it was a secret enquiry which was conducted by the Vigilance Officer of the respondent/company at the instance of the Chairman-cum-Managing Director, without affording any opportunity to the petitioner to defend himself thus in complete violation of the principles of natural justice. Such an order which has been passed casts stigma on the petitioner and, therefore, cannot be allowed to be sustained and the said impugned order deserves to be quashed on this short ground and is accordingly quashed.

In view of the fact that the impugned order (Annexure E) is quashed, the question as to whether the payment of three months' salary in lieu of notice in writing is to be made simultaneously need not be gone into nor it is necessary for this Court to examine the question as to whether the respondent/company having lost confidence in the petitioner could, therefore, terminate the services of the petitioner by resorting to Rule 41 of the Service Rules, since the said provision to the extent it is applicable to permanent employee is held to be invalid and ultra vires Article 14 of the Constitution. At any rate, the respondent had lost confidence due to the secret enquiry held against the petitioner behind his back without affording opportunity to the petitioner and was thus incomplete violation of the rules of natural justice.

As a result of the discussion hereinabove, the petition is allowed. The Rule 41 of the Service Rules of the respondent to the extent it relates to the termination of the service of permanent employee by giving notice in writing for three months or salary for the said period in lieu of notice is held void u/s 23 of the Contract Act being against the public policy and ultra vires Article 14 of the Constitution. Further a writ in the nature of certiorari is issued quashing the impugned order of termination (Annexure -E) of the petitioner. But since the petitioner has attained the age of superannuation on 31-1-1988, during the pendency of this petition, no reinstatement is ordered. But it is held that the petitioner shall be deemed to be in service between the period 8-6-3983 till his attaining the age of superannuation on 31-1-1988, The petitioner is entitled to all the monetary benefits including the arrears of salary for the aforesaid period from the respondent. It is hoped that the respondent shall pay all the arrears of salary and other benefits to the petitioner within a reasonable time. There shall, however, be no order as to costs. The outstanding amount of security be refunded to the petitioner.