

(1990) 08 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4292 of 1982

K.V. Narasimha Rao

APPELLANT

Vs

Labour Court, Guntur

RESPONDENT

Date of Decision : 23-08-1990

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1966 — Section 40, 40(1), 41, 41(1)
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5
Constitution of India, 1950 — Article 254(2)
Industrial Disputes Act, 1947 — Section 25

Citation : (1990) 3 ALT 605 : (1991) 1 APLJ 45

Hon'ble Judges : Yogeswar Dayal, J;Upendralal Waghray, J;M. Jagannadha Rao, J

Bench : Full Bench

Judgement

1. This writ petition has been referred to a Full Bench by B. P. Jeevan Reddi, J. (as he then was) and A. Lakshmana Rao, J. for deciding whether the conditions referred to in Section 40(1) of the A.P. Shops and Establishments Act (hereinafter referred to as the A.P. Shops Act, 1966) are conditions precedent for termination of the services of an employee and also for revolving the apparent conflict between the decisions of two Division Benches of this Court viz. Andhra Bank Ltd. v. Labour Court, Hyderabad and Others (W.A. No. 304/76 dated 28-7-1976) decided by B. J. Divan, C.J. and Muktadar, J. on the one hand and Indian Airlines v. K. D. Singh and Another (W.A. No. 533/76 dated 23-2-1978) decided by S. Obul Reddi, C.J. and Amareswari, J.

2. The facts of this case are as follows :- The petitioner was recruited as Probationary-Cashier in Bata Indian Limited (3rd respondent) and was posted as Cashier in Bata Shoes Stores, Guntur on August 25, 1989. Initially the probation was to be for six months. Subsequently the probation was extended for a further period of 3 months by an order dated March 10, 1980. That would mean that the probation as extended would be upto May 24, 1980. Subsequently an order was passed on May 9, 1980 (served on May 23, 1980) stating that the petitioner's

services during the period of probation were unsatisfactory and that his services would stand terminated with effect from May 24, 1980. The order further stated that arrangements were being made for settling his dues. Subsequently, a further letter dated June 9, 1980 was communicated offering to pay salary for one month in a sum of Rs. 554.37. It is revealed from the counter that the same was sent by money-order, but was refused by the writ petitioner. Questioning the said order of termination, the petitioner filed an appeal before the competent authority u/s 41(1) of the A.P. Shops and Establishments Act, 1966 (Assistant Commissioner of Labour-1, Guntur). The said authority framed two points for consideration : (1) whether the respondent had complied with the stipulations laid down u/s 40(1) of the Andhra Pradesh Shops Act while terminating the services of the petitioner and (2) whether the termination was for reasonable cause. The authority examined four witnesses for the petitioner and marked Exs. A-1 to A-4. For the respondent, it examined R.W. 1 and marked Exs. R-1 to R-19. On the first point, it referred to certain decisions which held that notice-pay could be paid later and held on point No. 1 against the petitioner. Coming to point No. 2, it held that the termination of the services was not for any reasonable cause but was mala fide and as a measure of victimisation for the personal reasons of the Manager of Bata Shoes Stores, Brodiepet, Guntur. The authority allowed the appeal by order dated April 30, 1981 and directed reinstatement with full back-wages and attendant benefits.

3. The Bata Company filed a second appeal before the Labour Court under S.41 of the A.P. Shops Act. The said Court framed a single question viz. whether the employee-cashier was entitled to be reinstated with or without back wages or for any other alternative reliefs. It observed that the petitioner was offered one month's salary subsequent to the termination and that the refused the same. It then went into the question whether the termination was for reasonable cause or was mala fide and held that there was reasonable cause and allowed the appeal and set aside the order of the 1st appellate authority. This order was passed on February 24, 1982. Thus, it will be seen that both the authorities agreed that non-payment of notice-pay did not vitiate the termination order. They only differed on the question of existence of reasonable cause.

4. The matter first went before Lakshmana Rao, J. who referred the matter to a Division Bench and thereafter to Division Bench referred the matter to the Full Bench. Neither the single Judge nor the Division Bench have gone into the question whether the Labour Court was justified in coming to the conclusion that there was reasonable cause for the termination.

5. It was contended by the learned counsel for the petitioner Sri G. Ramachandra Rao that both the first and second appellate authorities were wrong in law in not noticing that payment of notice pay along with order of termination was a condition precedent and that the 2nd appellate authority erred in holding that there was no mala fides. He contended that the conditions mentioned in Section 40(1) are conditions precedent and that the one month's pay had to be given or

tendered to the employee at the time of communication of the order of termination. He also contended that, in the event of it being held that the conditions mentioned in Section 40(1) of the A.P. Shops Act, 1966 are not to be treated as conditions precedent, the order of termination should be declared as invalid on the ground that the termination is, on facts, without reasonable cause. He contended that the finding of the Labour Court that the termination is for reasonable cause is vitiated by errors of law apparent on the face of the record. On the other hand, the learned counsel for the respondent-Management, Sri K. Srinivasa Murthy contended that the termination is for reasonable cause and that the conditions mentioned in the section are not conditions precedent and that the said notice-pay could be paid or tendered subsequent to the order of termination and within reasonable time. In any case, the right of the employee was merely to claim the one month's pay if not paid. It was not open to him to contend that the termination was illegal and seek reinstatement merely because the one month's pay was not paid or tendered along with the order of termination. He argued that the finding regarding the existence of reasonable cause is not vitiated by any errors of law as contended for the petitioner.

6. We shall first deal with the question whether the condition regarding payment of notice-pay is a condition precedent for the validity of the order of termination.

7. Section 40 of the A.P. Shops Act, 1966 in so far as material for the present purpose reads as follows :-

"Section 40 :- Conditions for terminating the services of an employee and payment of gratuity :-

(1) No employer shall without a reasonable cause and except for misconduct, terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee, atleast one month's notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for a period not less than 5 years, gratuity amounting to fifteen days average wages for each year of continuous employment.

Explanation :-

(1)

(2)

(3)

(4)"

8. The question whether the conditions mentioned in Section 40(1) were conditions precedent or not first arose before Chinnappa Reddi, J. (as he then was) in Andhra Bank v. Labour Court 1975 (2) APLJ 58. In that case the employee was a clerk in Andhra Bank and was put on probation for six months from April 6, 1970 and later the same was extended by three months from

October 6, 1970. Thereafter on January 2, 1971 his services were terminated with immediate effect and the order of termination stated that the employee would be paid one month's salary and allowances in lieu of notice. The said one month's salary was not paid on the date of termination, but the same was deposited to his account on January 5, 1971. The employee appealed to the authority under the A.P. Shops Act, 1966 which held that there was contravention of the provisions of Section 40(1) and directed reinstatement with back wages. The Bank appealed to the Labour Court, but the appeal was dismissed. The Bank then filed writ petition. The learned Judge observed that Section 40 contemplated simultaneous payment of one month's salary along with the order of termination. Payment of wages in lieu of notice was one of the modes by which the service of an employee could be terminated, the other mode being the giving of at least one month's notice in writing. Where the prescribed notice was not given, the only mode by which an employee's services could be terminated was by the payment of wages etc., in lieu of the notice. Where the prescribed notice was not given there could be no termination of service without payment of wages etc. The learned Judge relied upon the decision of the Supreme Court in *National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another*, which was a decision rendered u/s 25-F of the Industrial Disputes Act and wherein it was held that non-payment of the one month's wages along with the order of termination in lieu of one month's notice necessitated the setting aside of the order of termination and reinstatement. The learned Judge observed that there was "no difference in principle whether it be a case arising under the Industrial Disputes Act or under the Shops and Establishments Act." The learned judge further relied upon two other decisions of the Supreme Court viz., *Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, and Raj Kumar Vs. Union of India (UOI) and Others*, . These two cases decided by the Supreme Court involved an interpretation of the Provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (wrongly referred as 1949 in the judgment). In those cases the Supreme Court held, while referring to a similar circumstance of non-payment of one month's wages along with the order of termination, that the termination was bad and that the employee was liable to be reinstated. The learned Judge, however, distinguished *Strawboard Manufacturing Co. Vs. Gobind*, wherein the decision of the Calcutta High Court in *Metal Press Works Ltd. Vs. Deb (H.R.) and Others*, was approved. The said cases had arisen u/s 33(2)(b) of the Industrial Disputes Act and it was held that the conditions laid down therein could be treated as conditions which had to be complied with "simultaneously". On the same ground the learned Judge also distinguished another case in *Filmistan (P) Ltd. Vs. Balkrishna Bhiwa and Another*, which was also a case u/s 33(2)(b) of the Industrial Disputes Act. Against the said judgment of Chinnappa Reddi, J. (as he then was) dismissing the writ petition, the Andhra Bank filed a further appeal in *Andhra Bank v. Labour Court (supra) W.A. 304/76*. The Division Bench consisting of Divan, C.J. and Muktadar, J. allowed the appeal disagreeing with the learned single Judge and held :

"the language of Section 25(F) of the Industrial Disputes Act is different from the language of Section 40 and a prohibition has been set down in it prohibiting an employer from retrenching any employee unless what are described as conditions precedent to such retrenchment have been satisfied. The case of condition precedent stands on a different footing from conditions like those that are stated in Section 40 of the Andhra Pradesh Shops and Establishments Act."

Divan C.J. observed that a provision relating to retrenchment in Section 25-F of the Industrial Disputes Act was distinct from one like S. 40 dealing with termination. Adverting to the decisions of the Supreme Court in *R. M. S. Cochin v. K. V. Gopinath* (supra) and *Raj Kumar v. Union of India* (supra) which arose under Rule 5 of the Central Civil Services (Temporary Service) Rules 1965 the Division Bench distinguished those cases stating that -

"the express words used by Rule 5(1) are plain and unambiguous and they must be interpreted as a condition of the termination of service forthwith."

Divan C.J. then referred to decisions of the Supreme Court u/s 33(2)(b) of the Industrial Disputes Act, namely, *Straw Board Manufacturing Co. v. Gobind* (supra) *Kalyani v. Air Force* (1963 LLJ 679) *Filmstan (P) Ltd. v. Balakrishna Bhiwa* (supra) and thought that those decisions, in so far they held that the conditions laid down in Section 33(2)(b) were not conditions precedent, were more relevant. The concept of simultaneity enunciated by the Supreme Court therein meant that it was sufficient if the acts were parts of the same transaction though not necessarily simultaneous in fact. Reliance was also placed by Divan C. J. upon the judgment of the Division Bench of the Madras High Court in *State Bank of India Vs. The Additional Commissioner for Workmen's Compensation and Another*, , a case which arose u/s 41 of the Madras Shops & Establishments Act, 1947. On the basis of the above reasoning, the decision of Chinnappa Reddy, J. (as he then was) was reversed and it was held that the conditions laid down in S. 40 of the A.P. Shops Act, 1966 were not "conditions precedent" though the conditions in Section 25-F of the Industrial Disputes Act or Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, were conditions precedent.

9. On the other hand, the other Division Bench decision in *Indian Airlines v. K. D Singh* (W.A. 533/76 dt. 23-3-78) decided by Obul Reddi, C.J. and Amareswari, J. made under the Air Corporation Act, 1955 were conditions precedent. The Regulation 13 merely read as follows :-

"Regn. 13 :- The services of an employee are terminable at 30 days notice on either side, or basic pay in lieu."

They relied upon Senior-Superintendent, *R. M. S. Cochin v. K. V. Gopinath* (supra). No reference was made to *Andhra Bank v. Labour Court* (W.A. No. 304/76 dt. 28-7-76).

10. Now, the present reference to the Full Bench has been made on the assumption that there is a conflict between the Division Bench judgment in

Andhra Bank v. Labour Court (supra) (W.A. No. 304/76 dt. 28-7-1976) and the one in Indian Airlines v. K. D. Singh (supra) (W.A. No. 533/76 dt. 23-2-1978).

11. We shall initially refer to certain principles of interpretation of statutes which are relevant for the purpose of interpreting statutes employing words of a mandatory or negative character.

12. It has been held that, except as to time, there is no general rule, that prohibitory language in a statute is to be considered always as mandatory. While on the one hand, we find enactments expressed in negative and prohibitory language are not universally considered as being absolute, on the other hand enactments expressed in merely affirmative language have some times been held to be so. This was plainly stated by Lord Campbell in *Liverpool Borough Bank v. Turner* (1861) 30 LJ Ch. 379, 380 with regard to enactments expressed in merely affirmative language. "No universal rule", said he, "can be laid" down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed." (see Craies on Statute Law, Seventeenth Edition, page 262). The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and they are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other *State of U.P. Vs. Manbodhan Lal Srivastava*, .

13. For the purpose of ascertaining the intention of the legislature in enacting Section 40 of the A.P. Shops Act. 1966, it is necessary to refer to a few important provisions thereof. It will be convenient to refer to them and also make a comparison with some of the provisions of the Industrial Disputes Act, 1947.

14. The State law has no doubt been enacted under Entry 22 of List III of the Seventh Schedule to the constitution and the Central law was also enacted under the corresponding provision of the Government of India Act. 1935, referable to Entry 22 of List III. But Section 40 of the State Act "deals generally with termination of service which may be the result of misconduct, closure, transfer of establishment, etc., "while Chapter V-A of the Industrial Disputes Act deals with "lay-off and retrenchment" and was introduced by way of amendment in 1953. Chapter V-A consists of Section 25-F and other provisions and those are "special provisions" applicable to "retrenchment and lay-off". The State Act of 1966, Which received the President's assent under Article 254(2) of the Constitution does not however contain any provision relating to "retrenchment and lay-off". If there was any intention on the part of the State Legislature to create any implied repugnancy it would have "expressly provided for it and submitted the Bill for the assent of the President. The State legislature has not done so in this case. Section 40 of the State Act deals with terminations generally." *Krishna District Co-*

operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others, . This is the first difference between the State Act and the Central Act. Secondly, the definition of retrenchment in Section 2(oo) of the Industrial Disputes Act means termination by the employer of the service of a workman "for any reason what-so-ever, otherwise than as a punishment inflicted by way of disciplinary action" and except by way of the methods mentioned in sub-clauses (a), (b), (bb) and (c). It is termination that is subject to the "conditions precedent" mentioned in Section 25-F. On the other hand, there is no definition of "termination" under the A.P. Shops Act, 1966 and Section 40 speaks of termination without reasonable cause (except for misconduct) which is subject to the "conditions" mentioned therein. Thirdly, Section 2(i) of the Industrial Disputes Act, 1947 defines "industry" as any systematic activity carried on by co-operation between an employer and his workman for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes and includes certain items in sub-clauses (a) and (b) and does not include categories (1) to (9) enumerated therein. On the other hand, a "shop" is defined in Section 2(21) of the A.P. Act, 25 1966 as "any premises where any trade or business is carried on or where services are rendered to customers and includes the other categories mentioned therein, but does not include a commercial establishment. Section 2(10) defines "establishment" as a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment. Section 2(5) defines "commercial establishment" as one which carries on trade, business, profession or any work in connection with or incidental and ancillary thereto, or which is a clerical department of a factory or an industrial undertaking, or which is a commercial, a trading or banking or insurance establishment and includes one under the management and control of a cooperative society, an establishment of a factory or an industrial undertaking, which falls outside the scope of the Factories Act, 1948. Fourthly, though S. 40 of the A.P. Shops Act 1966 and S. 25-F of the Industrial Disputes Act, 1947 start with negative words, the latter uses the word "until" while the former does not use the said word. Under the Industrial Disputes Act, 1947, no workman, as stated therein, shall be retrenched "until" the conditions in clause (a) and (b) are satisfied. It has been explained by Gajendragadkar, J. in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, that the important word in Section 25-F is the word "until". The learned Judge after holding that clauses (a) and (b) were conditions precedent because of the use of the word "until", observed that clause (c) of Section 25-F was not a condition precedent and could only be condition subsequent. When we come to Section 40 of the Andhra Pradesh Shops Act, 1966, the Andhra Pradesh legislature has not chosen to use the words "until" but has merely used the words "without giving". It will be noticed that Section 40 is silent as to when the wages in lieu of notice are to be given. The word "without", in our view, does not have the same connotation as the word "until". While the word "until" connotes the idea of a condition precedent, the word "without" merely refers to a condition. In fact, when the

A.P. Legislature passed the Act in 1966, it was aware of the interpretation of the word "until" in Section 25-F by the Supreme Court in *Bombay Union of Journalists v. State of Bombay* (supra) decided in 1964 and did not choose to sue the word "until". If the A.P. Legislature intended that the conditions should be conditions precedent, it would have used the word "until" in Section 40 rather than the word "without".

15. From the aforesaid provisions, we are of the view that the State Legislature did not intend that the conditions in Section 40 of the A.P. Shops Act, 1966 should be conditions precedent.

16. It is true that in *senior Superintendent, R. M. S. Cochin v. K. V. Gopinath* (supra) and in *Raj Kumar v. Union of India* (supra) the Supreme Court held that the conditions in Rule 5 of the Central Civil Services (Temporary service) Rules, 1965 were conditions precedent. The rule as it stood (before the amendment in 1971 with retrospective effect 1-5-1965) read as follows :

"Rule 5 :- Termination of Temporary Service :

(1)(a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the authority to the Government servant;

(b) the period of such notice shall be one month :

Provided that the services of any such Government servant may be terminated forthwith by payment to him in a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month."

Construing the said provisions, the Supreme Court held in the first of the above cases that if the notice-pay was not paid to the Government servant at the time of termination, the said order of termination would not be effective. The rule, it was held, did not lend itself to the interpretation that the termination of service became effective as soon as it was served, irrespective of the question as to when the payment due to him is to be made. If that was the intention of the framers of the rule, the proviso would have been differently worded. It was observed (see para 5) that it was not necessary to express any view as to whether these conditions precedent were imposed keeping in mind the hardship in securing alternate employment immediately. The Supreme Court distinguished the case in *State of U. P. v. Dinanath Rai* 1969-SLR 646 (SC). We shall come back to *Dinanath Rai*'s case a little later.

17. The judgment of Supreme Court in *Senior Superintendent, R. M. S. Cochin v. K. V. Gopinath* (supra) was followed in *Raj Kumar v. Union of India* (supra) in respect of a termination of service forthwith which was dated June, 15, 1971. There was then a letter dated June 26, 1971 calling upon the employee to collect

his dues. It was not brought to the notice of the Supreme Court that Rule 5 was amended in 1971 with retrospective effect from May 1, 1965. The Court therefore heard the matter afresh in *Raj Kumar Vs. Union of India (UOI) and Others*, and set aside its earlier judgment and dismissed the appeal preferred by the employee. The amendment to the proviso to Rule 5 read as follows :

"Rule 5 :- Termination of temporary service :

(1) (a)

(b)

Provided that the services of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of the services or as the case may be, for the period by which such notice falls short of one month."

The amendment therefore conferred a mere right to collect the notice pay unlike the unamended rule. Once again the amended Rule 5 came up in *Union of India (UOI) and Others Vs. Arun Kumar Roy*, and it was held that the non-payment of the one month pay along with the termination letter was not an illegality. The Court pointed out that though the terms of the order of appointment contained a condition that the one month's pay was to be paid if services were terminated "forthwith", the employer was not bound by that term in view of the retrospective amendment of the rule conferring a mere right to collect the one month's pay. This was because it was not permissible "to rely upon the terms of the contract which are not in consonance with the rule governing the service."

18. A similar question again came up for consideration before the Supreme Court in *Bachi Ram Vs. Union of India (UOI) and Others*, where the employee was governed by the National Co-op. Development Corporation Service Regulations, 1975. Regulation 12 thereof read as follows :

"Regn. 12 :- Termination of service of an employee :-

(1) The service of a temporary employee other than a probationer may be terminated by giving him one month's notice or salary in lieu thereof."

In the termination order, it was stated that the employees concerned would be paid one month's salary in lieu of one month's notice period. The Supreme Court distinguished *Senior Superintendent, R. M. S. Cochin v. K. V. Gopinath* (supra) and followed the second *Raj Kumar's* case viz., *Raj Kumar Vs. Union of India (UOI) and Others*, for holding that the conditions in Reg. 12 were not mandatory. It was also pointed out (see para 17) that the Regulation 12 "does not contain any such stipulation as was found in the proviso to Rule 5(1) of the Central Civil Service (Temporary Service) Rules 1965" before its amendment.

19. So far as the decision in *State of U. P. v. Dinanath Rai* (supra), already

referred to, is concerned, the relevant portion of the rule there read as follows :

"(1)

(2) The period of such notice shall be one month given either by the appointing authority to the Government servant, or by the Government servant to the appointing authority, provided that in the case of the notice of the appointing authority, the latter may substitute for the whole or part of this period of notice, pay in lieu thereof ..."

It was held by the Supreme Court that under the relevant U.P. Temporary Government Servant's Termination of Service Rules, 1953 the payment of salary in lieu of notice need not be simultaneous with the order of termination. It was pointed out that the rule did not say that the pay should be given in cash or cheque "at the time" the notice was issued. They observed that knowing the way the Government were run, it would be difficult to ascribe this intention to the rule making authority. It was further stated that there was no doubt that the Government servant would be entitled to the pay in lieu of notice but this he would get "in the ordinary course".

20. It will be noticed from the aforesaid discussion of the various rulings that it is only in Section 40 of the A.P. Shops Act, 1966 and in S. 25-F of the Industrial Disputes Act, 1947 that the statute is couched in prohibitory or negative language. Mere use of prohibitory or negative language does not necessarily lead to the conclusion that the conditions are conditions precedent. It is the intention of the legislature that is relevant. We have already given our reasons as to why in the former statute the word "without" is to be read as not implying a condition precedent as opposed to the word "until" used in the latter statute. The intention of the legislature in each cash case was, as pointed out, different. Cases covered by Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (before amendment in 1971) do not help us. It is true that even though that rule is not couched in prohibitory or negative language, it has been held that the use of the word "forthwith by payment to him" implied that such payment is a condition precedent for the validity of the termination. That was because of the intention of the rule-making authority in those cases. On the other hand, with reference to the amended Rule 5 of the Central Civil Services (Temporary Service) Rules 1965 as also Regulation 12 of the National Co-op. Dev. Corpn Service Regulations, 1975 and Rule (2) of the U.P. the Temporary Government Servants Termination Rules, 1953, it has been held that these rules/regulations are not intended to create any conditions precedent but are merely intended to create an entitlement to receive the one month's pay and even if the payment is made subsequently, that did not, in any way, invalidate the order of termination. The provisions of the Section 40 of the A.P. Shops Act, 1966 are, in our view, also not intended to impose any conditions precedent.

21. We accordingly accept the correctness of the decision of the Division Bench consisting of Divan, C.J. and Muktadar, J. in Andhra Bank v. Labour Court (W.A.

No. 304/76 dt. 28-7-76). We, however, feel that there is no need to rely upon rulings falling u/s 33(2)(b) of the Industrial Disputes Act, 1947. We are also of the view that the decision of Kondaiah, J. (as he then was) in *National Insurance Co. Ltd. v. M. Viswanath* 1976 (2) APLJ 20 in so far as the learned Judge held that the breach of the condition laid down in S. 40 of the A.P. Shops Act, 1966 made the order illegal, the said decision is not correct because, the employee would, in such circumstances, be entitled only to one month's salary. We also over-rule the decision of the Division Bench consisting of Obul Reddi, C.J. and Amareswari, J. in *India Airlines v. K. D. Singh* (supra) for the Reg. 13 there was neither couched in prohibitory nor negative words. Nor were there any words similar to the words in the unamended Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 used. The said decision is contrary to the ratio of the decision of Supreme Court in *Bachi Ram v. Union of India* (supra).

22. For all the aforesaid reasons, we hold that the condition of payment of one month's pay in lieu of one month's in Section 40 of the A.P. Shops Act, 1966 is not a condition precedent but that it merely creates a right to the said pay if not paid along with the order of termination.

23. We shall now deal with the other submission of the petitioner's counsel that the finding of the Labour Court as to the existence of reasonable cause for the termination is vitiated. We have been taken through the relevant oral and documentary evidence available during the domestic inquiry and before the Labour Court and we are unable, for reasons which we shall presently mention, to accept the contention for the petitioner in this behalf.

24. The petitioner, as already stated, was appointed on probation on August 25, 1979 as Probationary-Cashier and was working at the Brodiepet Main Road Shop, Guntur. The Shop Manager sent up three progress reports on September 14, 1979, October 5, 1979 and October 26, 1979 which are Exs. R-8, R-9 and R-10 respectively. On March 10, 1980 as per Ex. R-11, the petitioner was informed by the Company that his performance during probation was unsatisfactory and the same is extended by another three months with effect from February 25, 1980. It is the petitioner's contention that the service of his Branch-Manager's son who was working at the Branch located in Brahmananada Reddi Buildings, Guntur were terminated by the Manager of that Branch, who was none other than the petitioner's grandfather, and that, therefore, his (petitioner's) Branch Manager at Brodiepet sent up the above reports, as also further reports on March 17, 1980, April 7, 1980, April 28, 1980 which are Exs. R-12 to R-14 respectively, with a view to see that the petitioner's services are terminated. The petitioner's services are terminated. The petitioner's case is that the District Manager acted at the instance of the said Branch Manager, Brodiepet.

25. The Labour Court, in found that thought the above facts might create some "suspicion" against the Branch Manager, Brodiepet, there was no material what-so-ever to say that the District Manager was under the influence of the Branch Manager. The District Manager conducted an independent test on April 22, 1980

and the petitioner secured 12% in one paper and 35% in another paper. These answer sheets are marked as Exc. R-4. In the petitioner's representation Ex. A-3 dated May 30, 1980 to the Head Officer at Calcutta, though the petitioner alleged mala fides against the Branch Manager, Brodiepet giving details, there are absolutely no allegations against the District Manager or that the test conducted by the latter was unwarranted or the assessment therein was also prejudicial or that the District Manager bore a grudge against the petitioner for "personal reasons". No details were specified. In the petitioner's evidence he stated that inasmuch as this grandfather (the Manager of the other Branch) refused to oblige in regard to the appointment of a candidate recommended by the District Manager, the District Manager too bore a grudge. The District Manager examined him self as R.W. 1 and denied these allegations. The Labour Court, on these facts, was, in our view, quite justified in holding that nothing is proved against the District Manager. We are, therefore, unable to hold that the Labour Court, had committed any error in arriving at the finding that the termination was for reasonable cause. In our opinion, the District Manager passed the order of termination on the basis of the test conducted by him and the termination order passed by him was based on sufficient material. Therefore, we cannot accept the contention that the termination was not for reasonable cause.

26. For the above reasons, the writ petition is dismissed. In the circumstances, there shall be no order as to costs.