
(2011) 04 CHH CK 0006

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 974 of 2005 with Writ Petition (S) No's. 975, 976, 977 and 978 of 2005

Moturam

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25O

Citation : (2011) 2 CG.L.R.W. 498

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Jitendra Pali, for the Appellant; Y.S. Thakur, Dy. Advocate General for the state/respondent nos. 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—The dispute involved in these petitions relate to the same incident. Thus, all the matters are being considered together and being disposed of by this common order. The petitioners, namely Moturam, Constable, Rajkumar, Constable, Bhuvaneshwar, Head Constable, Ashok Kumar Sahu, Head Constable, Ramgovind Shukla, Constable, were posted at Police Station Manpur, District Rajnandgaon. M.S. Gill was posted as Town Inspector. A departmental enquiry was initiated against all the petitioners on the basis of allegation that they remained absent from the duties without permission on 22-9-1992 when they were directed orally to remain present in the Police Station at 17.00 Hours by the Station House Officer, which was not followed. An enquiry was held and the petitioners were removed from service vide order dated 30-9-1993. The petitioners preferred a departmental appeal before the Deputy Inspector General of Police on 19-10-1993 which was rejected on 13-12-1993. A second appeal was also preferred by the petitioners before the Director General of Police, the same was rejected on 27-6-1994.

2. Being aggrieved, the petitioners filed Original Applications before the Madhya

Pradesh State Administrative Tribunal, Jabalpur, being registered as O.A. No. 2065/1994, 2066/1994, 2067/1994, 2068/1994, 2069/1994. After having considered all the facts of the case, all the aforesaid petitions were dismissed vide order dated 22-3-1997 (Annexure D/1). However, on a review petition, filed by the petitioners, the same was allowed and the matters were directed to be reheard vide order dated 29-6-1999 (Annexure D/2) on the limited issue as to whether non-appointment of the Presenting Officer resulted in vitiating the enquiry or not and whether the enquiry officer acted as a Judge as well as prosecutor. The Tribunal allowed the review application on the above stated issue as under:

11...we are of the opinion that the Tribunal did not give findings to the effect as to whether non-appointment of presenting officer resulted in vitiating the enquiry or not. Tribunal has also not given any findings as to whether the enquiry officer acted as a Judge as well as Prosecutor.

3. All the above petitions have been transferred to this Court on dissolution of the State Administrative Tribunal and re-numbered as W.P. (S) No. 974, 975, 976, 977 and 978 of 2005. Thus, the grievances of the petitioners in respect of perversity and irregularity in conduct of enquiry, have been considered and stand closed as the Tribunal has dismissed all the petitions on other grounds, except the ground raised and accepted on review applications i.e. whether the order passed in an enquiry is vitiated on the ground that the Presenting Officer was not appointed by the Disciplinary Authority, and whether, the enquiry officer acted as a Judge as well as prosecutor.

4. Shri Pali, learned counsel appearing for the petitioners would submit that the whole enquiry proceeding is vitiated on account of the fact that no presenting officer was appointed. The petitioners had made a request on 19-1-1993 (Annexure A-5 to W.P. (S) No. 974/2005) to appoint a Presenting Officer but it was not done. The Inquiry Officer himself assumed the role of the Presenting Officer. The role of the Inquiry Officer is of a quasi-judicial nature, thus, the Inquiry Officer cannot represent the department/disciplinary authority. The Inquiry Officer has relied on the preliminary report which was never supplied to the petitioners, and as such this tantamount to violation of the principles of natural justice. Thus, the punishment of removal of the petitioners from service, imposed by the Disciplinary Authority and confirmed by the Appellate Authorities, is liable to be quashed.

5. On the other hand, Shri Y.S. Thakur, learned Deputy Advocate General appearing for the State/respondent No. 1 to 5 would submit that these petitions had been decided by the State Administrative Tribunal, Jabalpur, on merits vide order dated 22-3-1997. However, on account of review application filed by the petitioners herein, these petitions were directed to be heard again on the question as to whether non-appointment of Presenting Officer would vitiate the enquiry proceedings or not and whether the enquiry officer acted as a Judge as well as prosecutor. Under provisions of Rule 14(5) (c) of the Madhya Pradesh/

Chhattisgarh Civil Services (Classification Control & Appeal) Rules, 1966 (for short "the Rules, 1966")/ it is not mandatory to appoint a "Presenting Officer" as Rule 14 (14) also provides that the Enquiry Authority may also put such questions to the witness as it thinks fit. Thus, the requirement of appointing a "Presenting Officer", is not mandatory. He would next contend that the petitioners have not pleaded any allegation of biasness on the part of the inquiring authority and have not objected to non-appointment of the presenting officer during the course of the enquiry. Even in the mercy appeal, there is no such ground. Thus, the instant petitions are devoid of merits and are liable to be dismissed.

6. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. Rule 14 provides for procedure for imposing penalties. The relevant provisions of Rule 14 are as under:

14. Procedure for imposing penalties.--

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(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose; and where all the articles of charges have been admitted by the Government servant in his written statement of the defence the disciplinary authority shall record its finding on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15;

(b) if no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose;

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant or permit them to file written briefs of their respective case, if they so desire.

8. The word "may" raises a presumption that the particular provision is directory but the same depends on the context, subject matter and object of the statutory provision and further, consequence by not complying with the provision.

9. Rule 14 provides for procedure for imposing penalties. The object of Rule 14 is to afford an opportunity of hearing to the delinquent employee in a proper manner before recording finding on the allegations levelled against the delinquent employee, and as such, in sub rule (4) of Rule 14, it is provided that the Government servant shall be served with a copy of the article of charges, statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge is proposed to be sustained. Thus, the object is very clear that the government servant should be given full opportunity to file proper written statement and examine the witnesses and cross examine the listed prosecution witnesses. Provisions of clause (c) of sub-rule (5) of Rule 14 provides for appointment of a "Presenting Officer". The word "may" has been used for appointing a government servant or legal practitioner as "Presenting Officer" to present the case in support of the articles of charges. Thus, the Presenting Officer presents the case in support of the articles of charges. However, it is provided in sub-rule (6) of Rule 14, that the Disciplinary Authority may also act as an Inquiring Authority. Sub-rule (8) of Rule 14, deals with assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner. Under sub-rule (14) of Rule 14, the word "shall" is used to the extent that "the Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined but not on any new matter, without the leave of the inquiring authority". The inquiring authority may also put such questions to the witnesses as it thinks fit. Thus, it appears that the role of the Presenting Officer is imperative. However, the inquiring authority may also examine and cross examine the witnesses. In sub-rule (15) of Rule 14, the Inquiring Authority is further authorized in its discretion to allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witnesses.

10. Under sub-rule (17) of Rule 14, though there is no provision for

reexamination or cross-examination by the presenting officer, as the same is to be done by the Inquiring Authority. Sub-rule 19 of the Rule 14, also provides that the Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed. Thus, the object is to appoint Presenting Officer to have fair, independent and unbiased enquiry.

11. Thus, on the bare perusal of the provisions of Rule 14 and the analysis, hereinabove mentioned, the word "may" used in sub-rule (5) (c) of Rule 14 may be construed as "shall" and appointment of the Presenting Officer is imperative. The context, object and purpose of the enquiry into the misconduct of a government employee has been considered by the Supreme Court in a catena of decisions holding that the inquiring authority acts in a quasi-judicial authority and is in the position of an independent adjudicator.

12. In the celebrated book on the Principles of Statutory Interpretation, 12th Edition, 2010 by learned author Justice G.P. Singh, (Former Chief Justice, M.P. High Court), it is observed as under:

In an oft-quoted passage LORD CAMPBELL said: "No universal rule 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 the real intention of the Legislature by carefully attending the whole scope of the statute to be considered". As approved by the Supreme Court: "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequence which would follow from construing it the one way or the other". (See: State of U.P. Vs. Manbodhan Lal Srivastava, The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, , State of Mysore and Others Vs. V.K. Kangan and Others, Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, , B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another, ,; Owners and Parties interested in M.V. "ValiPero" Vs. Fernando Lopez and Others, State of M.P. and Another Vs. Pradeep Kumar and Another, Sarla Goel and Others Vs. Kishan Chand,

13. In Seth Bikhraj Jaipuria Vs. Union of India (UOI), the Supreme Court held as under:

17... Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequence of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity: if it is directory,

penalty may be incurred for non-compliance, but the act or thing done is regarded as good. As observed in Maxwell on Interpretation of Statutes 10th Edn. P. 376:

It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequences in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded.

Lord Campbell in *Liverpool Borough Bank v. Turner*, (1860) 30 L J Ch 379 observed;

No universal rule 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 the 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.

14. The Supreme Court, in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, , it was held as under:

7. The question whether a particular provision of a statute which on the face of it appears mandatory--inasmuch as it uses the word "shall" as in the present case--or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether, the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

15. The Supreme Court, in *Keshav Chandra Joshi and others etc. Vs. Union of India and others*, held as under:

33...The word "may" consult the Commission has been used in the context of discharge of statutory duty. The Governor is obligated to consult the Public Service Commission. Therefore, the word "may" must be construed to mean

"shall" and it is mandatory on the part of the Governor to consult the Public Service Commission before exempting or relaxing the operation of rule regarding conditions of the service of a member to relieve him from undue hardship and to cause just and equitable results.

16. Reliance of the petitioner in Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, is not relevant to the facts of the case as on the question of illegality, perversity on enquiry, the issue already stands concluded.

17. In N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, the Supreme Court observed as under:

6...Even though the section uses the word "may" but keeping in view the objective of the Act and the context in which it has been used it should be read as "shall" otherwise it would frustrate the objective of the sub-section.

18. In Dinkar Anna Patil and Others Vs. State of Maharashtra and Others, , the Supreme Court held as under:

26...Rule 4-A opens with a non obstante clause and provides that if in the opinion of the State Government, the exigencies of service so require, the Government may in consultation with MPSC wherever necessary make appointments to the post in relaxation of the percentage prescribed in Rule 4 of the Rules by promotion and nomination. The Tribunal held that the word "may" used in this Rule is directory but in our considered view, to give such a meaning would render the very object of consultation with M.P. SC wherever necessary nugatory. It would give unbridle power to the Government to dispense with the consultation with MPSC which may result into arbitrary exercise of powers by the authority. This could never be the object of Rule 4-A. In our considered view, the word "may" must mean "shall" and this is also obvious from the correspondence between the State Government and MPSC.

19. A Constitution Bench of the Supreme Court, in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, , while considering the use of word "may" in section 25-O of the Industrial Disputes Act, 1947, observed as under:

14. Further sub-section (5) of the amended Section 25-O provides that the appropriate Government may, either on its own motion or on an application made by the employer or any workman, review its order granting or refusing permission or refer the matter to a Tribunal for adjudication. It has also been provided that if a reference is made to a Tribunal (under this sub-section) then the Tribunal should pass its award within a period of 30 days from the date of such reference. Counsel for the employers submitted that it is left to the discretion of the appropriate Government to either review or make a reference. They submitted that there is no right in the employer to compulsorily seek a review or a reference. The learned Attorney General, fairly submitted that the word "may", in sub-section (5) of the amended Section 25-O should be read as

"shall". He further submitted that the "review" would necessitate the making of an enquiry into all relevant facts, particularly the genuineness and adequacy of the reasons stated by the employer, and the giving of an opportunity of being heard. He submitted that the order passed on review would have to be an order in writing giving reasons. He submitted that even though sub-section (5) of amended Section 25-O, does not lay down any time limit within which the review was to be disposed off, a proper reading of the section would necessarily imply that a review would have to be disposed of within a period of 30 days from the date on which an application for review was made.

16. In our view, the learned Attorney-General is right. A proper reading of sub-section (5) of the amended Section 25-O shows that, in the context in which it is used, the word "may" necessarily means "shall". Thus, the appropriate government "shall" review the order if an application in that behalf is made by the employer or the workmen.

20. In *Moni Shankar Vs. Union of India (UOI) and Another*, relied on by the petitioners, the issue therein was conduct of departmental proceeding. In that context, it was held as under:

17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meets the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See--*State of U.P. v. Sheo Shanker Lal Srivastava and Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn.*).

21. In *State of Uttaranchal and Others Vs. Kharak Singh*, , relied on by the petitioners is also not relevant to the facts of the case, wherein the question was whether the Enquiry Officer exceeded his level by recommending that the officer has no right to continue in Government service.

22. In *Sarla Goel and Others Vs. Kishan Chand*, , the Supreme Court while considering the word "may" used in section 27 of the Delhi Rent Control Act, 1958, observed as under:

29. in other words, taking into consideration the object of the Act and the intention of the Legislature and in view of the discussions made herein earlier, we

are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may", in our view, was used by the Legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the Legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them.

30. In *Mohan Singh and others v. International Airport Authority of India*, this Court while dealing with the intention of the Legislature to use the word "may" or "shall" observed in paragraph 17 as follows: (SCC pp. 144-145).

17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall" or "may" depends on conferment of power. In the present context, "may" does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In "Craie on Statute Law" (7th Edn.) it is stated that the Court will, as a general rule presume that the appropriate remedy by common law or mandamus for action was intended to apply-General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that Legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall" is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of Court to try to get at the real intention of the Legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the Legislature and not always upon the language in which the intent is couched. The meaning and intention of the Legislature would govern design and purpose the Act seeks to achieve. In "Sutherland Statutory Construction" (3rd Edn.) Volume I at page 81 in paragraph 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends

upon exercise of authority in accordance with their charter of existence the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, the variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation. In "Crawford on the Construction of Statutes" at page 516, it is stated that:

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 these 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.

23. Further, in *State of U.P. and Others Vs. Saroj Kumar Sinha*, , the Supreme Court held as under:

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the departmental/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

24. A Division Bench of the High Court of Madhya Pradesh, in *Union of India (UOI) through its Union of India (UOI) and Others Vs. Mohd. Naseem Siddiqui*, . with regard to the nature of domestic enquiry, in that case, no provision of law has been pointed out before the Hon"ble Division Bench wherein the appointment of the presenting officer, the Division Bench through Shri R.V. Raveendran (C.J. as he then was), held as under:

5. Rule 9(9) (c) of the Rules relied on by the Railway administration is extracted below for ready reference:

Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a Railway or any other Government servant to be known as "Presenting Officer" to present on its behalf the case in support of the articles of charge.

The contention of the petitioners is that as the Rule uses the word "may appoint a Presenting Officer", appointment of a Presenting Officer is not mandatory and such appointment depends on the discretion of the disciplinary authority. A

careful reading of the said rule shows that it is an enabling provision which gives discretion to the disciplinary authority to appoint any railway or other government servant as a Presenting Officer to present the case on behalf of the Disciplinary Authority. But the said provision does not permit an enquiry officer to act as the Presenting Officer and conduct examination in chief of the departmental witnesses and cross examine the defence witness.

16. We may summarise the principles thus:

(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the enquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself not vitiate the inquiry and it is recognized that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be invariably appoint Presenting Officers, except in simple case. Be that as it may.

25. A Division Bench of the High Court of Kerala, in *M. Rama Warriar and Others Vs. Coir Board*, observed as under:

10. In our view, the contention of learned counsel for the respondent is well-founded. The expression used "as far as may be" in clause (1) of bye-law 11 and the expression "Presenting Officer, if any," used in clause 16 and 19 clearly indicate that the appointment of a Presenting Officer is not mandatory. In the circumstances, it cannot be said that the failure to appoint a Presenting Officer

will vitiate the proceedings and render the inquiry illegal and void. Learned counsel for the appellant has a wider contention that, in any event, the failure to appoint a Presenting Officer will violate the provisions of the principles of natural justice in as much as, by this omission, the enquiry officer was constituted both as a judge and prosecutor. The failure to appoint a Presenting Officer cannot be considered as ipso facto violating the principles of natural justice unless it is established that the enquiry officer was biased or that the delinquent was prejudiced by the failure to appoint a Presenting Officer. In *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, , the Supreme Court had occasion to consider the validity of a domestic enquiry where no separate Presenting Officer was appointed. In that case, the Supreme Court found that in the domestic enquiry, the management was not represented by any officer separately and that the question to the workmen and the witnesses were put by the enquiry officer himself. The Court, however, held that this did not vitiate the domestic enquiry and that the enquiry officer, in the circumstances, could not be said to have acted as the prosecutor and the judge. In the instant case, it is not shown that the appellant has, during the enquiry, ever complained about the failure to appoint a Presenting Officer. It has also not been shown that the enquiry officer had any bias against the appellant or that the appellant was in any way prejudiced by the failure of the defendant to appoint a Presenting Officer. Once it is found on the interpretation of the bye-law that requirement to appoint a Presenting Officer is not a mandatory provision, the appellant cannot succeed unless he established that the enquiry officer was exposed to bias or that he was prejudiced by the failure to appoint a Presenting Officer.

26. A common thread running into the above stated decisions is, that the appointment of the presenting officer may be not mandatory, if the inquiring authority acts in an independent and fair manner and not as a representative of the department/Disciplinary Authority or the Government. In the case on hand, the petitioners have pointed out that during the course of enquiry, a request was made on 19-1-1993 (Annexure A/5) to appoint the Presenting Officer which was completely ignored and the inquiring authority, on the basis of preliminary report, without supply of the preliminary enquiry report to the petitioners, proceeded further which is evident from para 34 of the enquiry report wherein it has been stated that the witnesses who had made statement in the preliminary enquiry had changed their version in the departmental enquiry. Further, without assigning any reason, the inquiring authority held that the statements recorded in the preliminary enquiry was creditworthy and the deposition of the same witness recorded in the departmental enquiry in presence of the delinquent employees, are not worth acceptance.

27. In the preliminary enquiry, Shri R.K. Gandhi (PW/1), who conducted the enquiry, examined certain witnesses namely Pyar Alillani (PW/5), Mohanlal Gandhi (PW/6) and Sadaram Sinha (PW/8) and recorded that a gambling was going on in the premises where he was present. The said witnesses, during the

enquiry, deposed that they were asked to put their signature on certain statements which they have signed and they had no knowledge of the content. In fact, there was no incident of gambling as has been reported in the preliminary enquiry. The inquiring authority acted as prosecutor rejecting the deposition made during departmental enquiry without specifying reasons and accepted the statement made in the preliminary enquiry. On other occasion, when Shri Gandhi produced the preliminary enquiry report to prove his signature and contents of the same. The petitioners requested for sometime to go through the preliminary enquiry report but the same was not supplied to the petitioners before it was examined. The inquiring authority has acted as prosecutor and declined to grant time and proceeded with the enquiry proceedings holding that the presence of the accused employees are not necessary in the preliminary enquiry (See: Annexure P/6, para 27).

28. It is well settled position of law that enquiry officer is required to act as a quasi-judicial authority and is in the position of an independent adjudicator, following the basic principles of natural justice. The principles of natural justice require that the delinquent employee should be afforded proper opportunity to rebut the contents of a document, which is under consideration in support of the allegations. Since the preliminary enquiry report was not supplied to the petitioners, the petitioners were justified in asking for time to examine and cross-examine the preliminary enquiry report, which the inquiring authority had declined. The petitioners have requested during the enquiry to appoint a "Presenting Officer" on 19-1-1993 (Annexure A/5) and even in reply to the second show cause notice issued alongwith enquiry report, specific plea was raised by the petitioners. The petitioners specifically submitted that the Presenting Officer was not appointed under the provisions of law, and as such, the petitioners were not in position to put forward their cases properly. Thus, contention of the respondent-State that the petitioners never, requested for appointment of Presenting Officer and no issue of bias was raised, is contrary to the facts, and deserves to be rejected.

29. The petitioners have, therefore, established that the inquiring authority, in absence of Presenting Officer, was biased in recording the findings and as such, has acted as a Judge as well as prosecutor.

30. For the reasons and analysis mentioned hereinabove, the impugned order dated 30-9-1993 (Annexure A/13) passed by the Superintendent of Police, Rajnandgaon, order dated 31-12-1993 (Annexure A/16) passed by the Deputy Inspector General of Police, Raipur Range, Raipur and the order dated 27-6-1994 (Annexure. A/18) passed by the Director General of Police, are quashed and the respondent-State of Chhattisgarh is directed to reinstate the petitioners in service. It is further directed that the period from the date of their removal from service shall be counted for the purpose of continuation of service and other benefits. However, the petitioners shall not be entitled to back-wages as their conduct was of serious nature, which is not warranted in police force.

31. Accordingly, all the writ petitions are allowed. There shall be no order as to costs.