

(1984) 11 DEL CK 0047

In the Delhi High Court

Case No : Civil Writ Appeal No's. 2089, 2090, 2091 and 2092 of 1981

S.D. Sharma

APPELLANT

Vs

Trade Fair Authority of India and Others

RESPONDENT

Date of Decision : 19-11-1984

Acts Referred:

Constitution of India, 1950 — Article 12

Employees (Conduct, Discipline and Appeal) Rules, 1977 — Rule 27

Citation : (1985) 2 LLJ 193 : (1985) 1 SLJ 160

Hon'ble Judges : S.B. Wad, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : G.R. Chopra, Umesh Mishra, Raj Panjwani and Raj Panjwani, for the Appellant;

Judgement

Sachar, J.

(1) This writ petition was beard together with others and they will be disposed of by this common judgment as the counsel agreed that the decision in this. writ petition will govern the decision in other petitions. (2) This writ petition challenges the order of removal of 7-4-1981 as up-held in appeal by the order of the Managing Director of respondent No. 1 Trade Fair Authority as per his order dated 15-7-1981 by which the petitioner has been removed from service. The charge sheet was served on the "petitioner on 17-2-1981 proposing to hold an enquiry against him under Rules 27 and 28 of the Trade Fair Authority of India Employees" (Conduct, Discipline and Appeal) Rules, 1977 (hereinafter to be known as "Conduct Rules"). The charge reads as under ;

THATa demonstration was held on 3rd February, 1981 by some of the Employees of the Trade Fair Authority of India in office premises in which inflammatory speeches were made and defamatory slogans were shouted. Chairman and some other officer of the Tfai were criticised. Shri S. D. Sharma was one of the speakers. A news item appeared to this effect in the Patriot dated the 4th February, 1981. Shri S.D. Sharma"s action comes under the definition of "mis-

conduct as defied in the "Trade Fair Authority of India Employees" (Conduct, Discipline and Appeal) Rules. This relates to Rule 5(6) regarding willful insubordination and Rule 5(21) regarding meetings, demonstrations, slogans shouting's etc. within the premises of the Authority without permission of the Competent Authority etc. Chairman and "Rule 5(20) Commission of any act subversive of discipline or of good behavior,

SHRIS. D. Sharma has, Therefore, violated Rule 5(6), 5(20) and 5(21) of Tfai Employees" (Conduct, Discipline & Appeal) Rules."

THEREAFTER an enquiry was held and the order of removal was passed by the General Manager vide his order of 7-4-1981 and his appeal failed. The petitioner being aggrieved has come to this court.

(3) Lathe fore-front the first objection raised by Mr. Punjwani the learned counsel for the respondent is that no writ petition lies because according to him Trade Fair Authority is not a State within the meaning of article 12 of the Constitution we cannot agree. It was in pursuance of a decision of the Government of India that "Trade Fair Authority" has been registered as a company u/s 25 of the Companies Act, 1956 on 30-12-1976 and started functioning from 1-3-1977. The company was established by amalgamating the functions of two government organisations, namely India international Trade Fair Organisation and Directorate of Exhibitions and Commercial publicity of the Ministry of Commerce and the Indian-Council of Trade Fairs and Exhibitions, Bombay. This was done with view to unify policy directions, control in the field of publicity and was to replace and take over the functions and activities of the above said three organisations. Pragati Maidan Complex at New Delhi which is owned by the Central Government with all its assets and fittings, equipment, furniture etc. were leased out to the respondent Trade Fair Authority at a nominal rent of Re. 1 per annum. The company was formed with four share-holders i.e. 1. The President of India, 2. Mohd. Yunus, 3. C. Venkataraman Joint's Secretary Ministry Commerce and.4. B. Ramadorai. Chief Executive- Director," Fair Organisation, Ministry of Commerce, New Delhi. The share Capital of the company is Rs. 50 lakhs divided into 50,000 equity shares of Rs, 100 each. The President through the Secretary (Foreign Trade) Ministry of Commerce, New Delhi, holds 24997-shares and the other three directors hold one share each. The objects for which the company was established include the publicity in India abroad International Trade Fairs and Exhibitions to be held in India and invite the foreign participants to participate in them. Among either objects the memorandum provides that respondent authority will undertake at the instance of the Union Government any trade or ether activity connected with the above objectives .Clause (4) provides that except with the previous approval of the Central Government no remuneration or other benefit in money Or moneys worth shall be given- by the company to any of the members whether officers or officials of the company, and except with the previous approval of the Central Government no member shall be appointed to any office under the company which is remunerated by salary, fees or in any

other manner not excepted by sub-clause (3).

(4) Article 59(2) of the Trade Fair Authority provides that chairman of the board of directors shall be appointed by the President and other directors (including the Managing Director) shall be appointed by him in consultation with the chairman. Clause (3) of Article 59 empowers the President to remove any director including the chairman and Managing Director from office at any time in his absolute discretion.

(5) The petitioner himself was a permanent employee of the Ministry of Commerce. The petitioner's services were transferred to respondent Authority on 1-7-1977. "The memorandum dealing with the subject of Trade Fair Authority officials previously working in the Directorate of Exhibitions and Commercial publicity specifically protected the existing terms and conditions of the service in the erstwhile directorate of Exhibitions and Commercial publicity. Even the seniority of various persons who were working in the Directorate was to be maintained as at before they joined the respondent authority.

(6) It is well established that whether corporation is created by a statute or it may be a government company or a company formed under the Companies Act, it would be an authority within Article 12 if it is "an instrumentality or agency of the government.

(7) The test Therefore is to see whether the corporation is an instrumentality or agency of the government. Some of the relevant tests have been summarised in the above decision in para 9. The first test is "One thing is clear that if the entire share capital of the Corporation is held by the Government it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government. This test is completely satisfied in the present case. The whole share capital is furnished by Union of India. Subscribers to the Memorandum of the company are government officers. The Financial assistance given to the respondent in the nature of Pragati Maidan complex would itself show had pervasive is the interest of the government and control as to make an argument that it is not a state" almost a non-starter.

(8) It is impermissible to assert that Trade Fair Authority is not an instrumentality of the government when the very functioning depends on the use of pragati Maidan Complex without which Trade Fair Authority could never even move. As a matter of fact unless it is held that the Trade Fair Authority was a State, the handing over of the Pragati Maidan Complex at a token rent of Re. 1 per annum, by the Central Government would without difficulty have to be held as arbitrary because in that case the lease would be to a private company and straight away would suffer the infirmity of being discriminatory. The only manner the present arrangement can be justified is by the holding of Trade Fair Authority being agency of government. Mr. Punjwani's argument that respondent authority is not the only body to hold fairs and there are some other corporations which can also hold fairs and Therefore the respondent Authority cannot be said to enjoy

the sole monopoly of holding fairs does not appeal to us. We cannot agree that unless the Authority enjoys exclusive monopoly status it cannot be an instrumentality of the State. Now Hindustan Steel Ltd., a public sector company is not the only company engaged in the production of Steel. Even there is a private sector company which is producing steel. Even then Wad, J. held it to be a "State" though no doubt Prakash Narain, J. (as he then was) held differently. But since then in view of Ajay Hasia's case (supra) it will be presumptuous not to hold that Hindustan Steel Ltd. is a State and we do hold accordingly. Also see 1984

(9) What has to be seen is whether there is so much over all control of the government that it cannot be anything but an agency of the government. The all pervading power of the President to "appoint Chairman and Directors and to remove them at his sole discretion can hardly leave a minutes doubt that Trade Fair Authority is nothing but an instrumentality of the government. Such over-all control by the President is totally incongruous in a private company. This deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (Test No. 4 Ajay Hasia's Case supra). It has Therefore to be hold that Trade Fair Authority is a State within Article 12 amenable to the writ jurisdiction of the court under Article 226 of the Constitution.

(10) With regard to the order of removal various objections have been raised by the counsel for the petitioner, Mr. Chopra. The substance of these is that there has been a denial of natural justice and absence of reasonable opportunity and non-compliance with the Conduct Rules. It is also contended that the decision of the respondent Authority is based on no evidence and hence it is vitiated.

(11) Serious contention was raised by Mr. Chopra to the (manner of holding enquiry i.e. the denial to supply documents, absence of opportunity for cross-examination, which denied the principles of natural justice, as supporting his contention to challenge the findings against the petitioner.

(12) Mr. Punjwani apart from joining issues on factual matters put forth the bold, and if we may say so, extreme contention that the conduct rule being not statutory no complaint can be raised even if they are breached. Mr. Punjwani however ignore that the procedure for holding enquiry for alleged misconduct against the employees is only a formalization of the procedure to satisfy the requirements of natural justice. Whether the rules are statutory or not does not take away the compulsion to observe the principles of natural justice when any action is contemplated, and which can in term of the requirements of Rules (statutory or not) be taken for good and sufficient reason. One would normally consider it a heresy to contend that if there are no statutory rules a public employee cannot invoke the principle of natural justice. But such is the contention of Mr. Punjwani. He seeks to support his plea by the observation of Prakash Narain, J in made in para 27 to the effect that "no question arises of violation of Article 14 or any other Constitutional provisions if the State

terminates a contract of service or any other contract contrary to its conditions question of natural justice does not arise.... in employer and employee relations not regulated by a statute or statutory rules Question of complying with the rules of natural justice does not arise. This finding was given in the course of coming to a conclusion that Steel Authority of India limited was not a State within Article 12 of the Constitution. In coming to this conclusion the learned judge relied on a full bench decision of this court reported as which had held that Indian Council of Agricultural Research cannot be regarded as an Authority in the matter of appointment of its staff for the purpose of Article 226 of the Constitution. He also relied on We may notice that this view of Sail not being an Authority within Article 226 was however not accepted by the other learned judge (Wad, J.) Constituting the bench; who held that Sail is an agency or an instrumentality and hence an authority within Article 226 of the Constitution. Why the learned judges agreed in dismissing the writ petition was because they found that the breach complained was of contract and he was seeking to enforce the contractual obligations. That case has no relevance to the present case. We may also note that in the subsequent decision reported as Prakash Narain, J. himself accepted that an employment in the State Bank of India was statutory employment and that the employee was entitled to invoke the principles of natural justice. The learned judge noted that the employee was not given documents at the appropriate stage..... he was not allowed to cross-examine the witnesses and observed that the statutory authority cannot be allowed to act in that manner. Ved Prakash Malhotra's case was distinguished in view of the pronouncement of the Supreme Court in It may also be noticed that Dr. Y. P. Gupta's case on which reliance was placed in Aggarwal's case (supra) was over ruled by the Supreme Court in In view of the latter law and the authoritative pronouncement of the Supreme Court it is not possible to rely on these observations that principle of natural justice will not apply in the case of public employment. These observations by Mr. Punjwani, if we (may say, though raised were too broadly stated and cannot be of any avail to him. This argument of Mr. Punjwani thus overlooks that service rules only provide same mechanism as principles of natural justice would require, if there were no statutory rules because it is by now well settled that if any adverse decision is taken and there is of denial of cross-examination of witnesses, it would be arbitrary and thus violative of Article 14 of the Constitution, and if it affects any public employment it is also violative of Article 16, which strikes at arbitrariness .

(13) In our opinion once the conduct rules have been framed by the Respondent Authority it is not permissible for it to urge that it is not bound to comply with the same on the fallacious reasoning that they are not statutory. No authority can be allowed to opt out of rules "framed by it for the benefit of employees unmilitary .An administrative authority which purports" act by its regulations must be bound by the regulations Even if there are no conduct rules, any disciplinary action will have to comply with the principles of nature justice. Thus even if at the time of dismissal. the statutory regulations had not been framed or

had not come into force, then also the employment of the respondent was public employment and the statutory body. the employer could not terminate the services of its employee without due enquiry accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Can it be disputed that rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant corporation; see Managing Director.

(14) Now let us examine the various infirmities pointed out by the petitioner as vitiating the removal. As mentioned above the charge against the petitioner is of violating the Rule 5(6), (20 and 21) which are as follows :

5(6) willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior.

(20) Commission of any act subversive of discipline or of good behavior.

(21) Holding meetings, demonstrations, slogans shouting etc. within the premises of the Authority without permission of the chairman.

IT was not pointed out nor was it seriously urged that there was any insubordination of any order issued by the superiors, under Rule 5(6). The real gravamen of the charge appears to be that the petitioner along with others held meetings in the premises of the respondent Authority in which they are said to have raised slogans and that the same were held without the permission of the chairman, thus violating Rule 5(20) & (21). Now the defense is that the management had agreed in May, 1979, to grant certain benefits which were not implemented and because of this non-implementation the petitioner and others held a protest meeting on 3-2-1981 which was completely peaceful. It was denied that any objectionable slogans were raised and the further defense was that since from the very inception they have been holding meetings by issuing circulars and that similarly this meeting was held after issuing circular with the intention of drawing the attention of the Chairman to fulfill the agreement. The use of any objectionable language was denied. It is also the case of the petitioner that no objection was ever raised for issuing circular for holding the meeting and that they had been holding the meeting previously without any objection from the management. The meeting was held outside the office. It is also denied that any slogans were raised against the officers as it was maintained that they had cordial relations with the management. No unparliamentary language was said to have been used.

(15) The first objection of denial of reasonable opportunity made by Mr. Chopra is said to be the refusal by the management to give permission or to allow the petitioner to engage legal practitioner for his defense. Rule 27(6) provides that "the employee may take the assistance of another public servant to present his case, but may not engage a legal practitioner for the purpose unless the person

nominated by the Disciplinary Authority is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case so permits. It is not disputed that the preventing officer was not a legally trained person. The charge was also a straight one of having held the demonstration and was not of such complex nature which should " warrant an absolute necessity to engage Legal practitioner. We Therefore cannot bold that refusal to allow the legal practitioner in any way prejudiced the petitioner.

(16) The next objection is that the petitioner has asked for service of one Shri Ashwani Kumar to defend him. This wan also not permitted. The reason is that Ashwani Kumar had retired from the service. Rule 27(6) permits an employee to take the assistance of another public servant. As Ashwani Kumar had retired he was no longer a public servant and the petitioner could not insist upon his assistance being given. There is however force in the objection of the petitioner in Cw 2092181 and 2091181 that they were not given the help of another officer, M. L. Jain for whom they had sought permission.

MR.Jain was an employee of the respondent Authority and the denial of his assistance certainly can legitimately be a matter of complaint. It may also be noted that the petitioner had also asked in reply to the charge sheet that he may be supplied the documents and the list of witnesses which had been examined earlier. This was refused by the management because according to it, Explanation below Rule 27(3) it was not necessary at this stage to give the documents. Apparently the documents were given to the petitioner on 12th when he appeared before the Enquiry Officer.

(17) From the record produced before us it would appear that the defense witnesses were examined earlier than the witnesses produced by the management. This seems to be a complete reversal of the manner of holding an enquiry because it would show as if the charges are accepted to be prima facie true even before examination of the management witnesses. This procedure reverses the whole criminal jurisprudence and it is assumed that the guilt is proved and that it is for the employee to prove his innocence which certainly denies any fair opportunity to the employee.

(18) Another objection is that the witnesses for the management were not allowed to be cross-examined. Three witnesses were produced. Out of them the grievance with regard to two is correct but we do find that some questions were asked from the third witness; R. K. Sen Gupta. Denial of cross-examination of two witnesses is certainly open to criticism but need not detain us because the enquiry officer has not relied on these two witnesses to prove the charge against the petitioner because for the obvious reason that they do not implicate the petitioner. Through we must say that the procedure followed by the enquiry officer was not in accordance with the fair principles of natural justice and would vitiate the impugned order, the infirmity of the impugned order of removal goes much deeper, namely that the findings that the charges have been proved against" the petitioner are based on no evidence or material arid are on this

ground liable to be quashed.

(19) Now there is no dispute that" a meeting was held. Petitioner spoke and participated in the meeting. Mr. Chopra accepts all this and says that the petitioner had a fundamental right under Article 19 to attend meeting and hold demonstration and if Conduct Rules are interpreted to make such participation per se actionable the said action would be plainly not only illegal but unconstitutional. We find force, in this contention.

(20) In first Part of Rule 4.A to the effect that "no government servant shall participate in any demonstration or resort to any form of strike in connection with any matters pertaining to his conditions of service", was held to be violative of Article 19 of the Constitution as infringing the protection guaranteed by Article 19(1)(a) & (b) of the Constitution. The court specifically held that right to make a demonstration is covered by Article 19(1)(a) and 19(1)(b) as it is in effect a form of speech or of expression. It was also recognised that demonstration may take various forms and that a peaceful and ordinary demonstration to draw attention to their grievances would fall within the freedoms guaranteed under these clause"s. The court struck down the rule because the vice of the rule consists in this that it lays a ban on every type of demonstration be the same, however, innocent and however incapable of causing, a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result. The court also rejected the contention that person in service of government are outside the protection of Part III of the Constitution.

(21) That departmental proceedings taken against an employee for participating actively in demonstrations organized in connection with strike were quashed as being violative of the fundamental right guaranteed under Article 19(1)(b) of the Constitution and the principle laid down in *Kameshwar Prasad's case* (supra) were reiterated (See : *O.K. Ghosh and Another Vs. E.X. Joseph*, . In that view even on the assumption that a meeting was held and demonstration made without the permission of the Chairman could not found a valid charge. The mere fact that clause 5(21) so provides, is of no consequence because if it is so applied to the prohibiting of a peaceful demonstration which has been recognised as clause" (super) case *Kameshwar's* is protected constitutionally

(22) Mr. Punjwani however seeks to distinguish *Kameshwar's* case by arguing that the meeting was held on the premises of the respondent Authority and refers to . In that case the Supreme Court upheld the circular issued by the Northern Railway which prohibited the holding of demonstration inside the Railway premises or at a place of work. Rejecting the plea that the workers had a right to hold demonstration in the premises and a circular as being violative of Article 19(1)(a) and (b) the Supreme Court observed that there is no fundamental right for any one to hold meeting in Government premises but it however added an important rider that unless it is shown that either under law or the usage that the railways employees had been holding the demonstration inside the premises. That case is clearly distinguishable. In that case all that was laid down was that

the railway workers could not insist on holding meeting in the railways premise inside the workshop. The court held that the premises were not open for being used by the general public. This case is clearly distinguishable. In the present case the petitioner had taken a specific stand that from the very inception they had been holding the meeting by issuing circular and that no one had objected to the issue of the circular or of holding of meeting. It was also pleaded that the circular was issued informing the respondent authority of the holding of the meeting specifically in the said present Instance. There was no evidence to the contrary produced by the management at all. As a matter of fact there was no cross-examination on this aspect of the matter.

(23) Sh. R. K. Sen Gupta the only management witness relied on by the Enquiry Officer, admits when questioned by the petitioner M. L. Jain that prior to the holding of meeting General Manager had directed him on 3rd February to watch the meeting to be held by workers and give a report. Thus It is moved beyond doubt that the management knew of the holding of meeting before hand and yet it gave no instruction or directions not to hold the meeting. The version of the petitioner that the practice was to hold a meeting by circulating the information and the management never objected to it stands proved by the manner management has acted in this behalf. Reference to the publication of the meeting on 4th February in the newspaper is not the source of information. If knowing before hand of holding of the meeting no objection was made it is futile now to contend by the management that the meeting was held without permission of the chairman. On that finding the question of violation of rule 5(21) of the Conduct rules" cannot arise because it cannot be said that holding of the meeting without the permission of the chairman. The usage was that circular was issued for holding a meeting and unless it was objected to, the permission must be implied to have been given. It thus cannot be said that the meeting was held without permission.

(24) There is another difference from Niranjan Singh's case. In the vast complex of Pragati Maidan is spread over acres of area. It is no body's case that the meeting or demonstration was held in the office premises. As a matter of fact Ex. P. 13 the note prepared by the main management witness on whom reliance has been placed by the Enquiry Officer itself shows that the meeting was held on the lawns of the Nehru Pavilion facing Ring Road and the meeting was peaceful and well behaved. It is also mentioned in the note that the meeting was held between 1330 hours to 1400 hours. The meeting was attended by 99 per cent of the employees. The points mentioned by the speakers are said to have related to the recruitment rules and seniority rules and the existing policy of recruitment daily wages. Extravagant expenditure on meaningless cultural programmes, conveyance and facilities for the guides. The meeting was so peaceful and well mannered that it dispersed immediately at 14.00 hours on reaching near the staircase No. 1 of the Block. It is clear that the Pragati Maidan is not a private property because public at large is permitted to come and visit this place. The demonstration was held in open area. It is not the case like Niranjan Singh

where the demonstration was held in the private property of the railways where the public had no access. Pragati Maidan is a public area and the only condition is that the public has to buy tickets for entrance. The public thus has a right to assemble and meet on this place the only limitation being one has to buy a ticket. Pragati Maidan complex therefore where the meeting and demonstration were held could not be said to be the exclusive property like in *Niranjan Singh's* case and these observations could not therefore apply in the present case.

(25) Though we have held that the chairman must be implied to have given his permission to hold the meeting, but even if the permission was not given by the chairman it would make no difference. The reason is that if Rule 5(21) was to be held broadly to mean that it prohibits the holding of peaceful meeting and demonstration simply because the permission of the chairman has not been obtained, the same will have to be doctored *ultra vires* in terms of the ratio of *Kameshwar's* case. Rule 5(21) can only be upheld by reading it to mean that only meetings or demonstrations which lead to the breach of tranquility are prohibited. It is *Dooley's* case that there was breach of tranquility or public order by holding the meeting. The Authority by invalidating a rule like Rule 5(21) cannot in any way fetter the undoubted right of holding peaceful meeting and demonstration conferred on the petitioners. Thus from whatever angle the matter is looked into no case is made out for violation of clause 5(21) of the Conduct Rules.

(26) On the failure to prove charge under Rule 5(21) of the Conduct Rules charge under rule 5(6) would automatically fall because if as found there was no lawful order prohibiting the holding of meeting, no question of willful or otherwise insubordination or disobedience arises.

(27) With regard to charge under Rule 5(20) there can obviously be no act of subversive discipline or good behavior if as held already no fault can be found by holding meeting or demonstration. However, it was argued by Mr. Punjawani that raising of slogans of Murdabad are acts subversive of discipline. Now reference to Article of charge would show that general bald allegation has been made of having raised defamatory slogans and having made inflammatory speech. There was no specification at all of what defamatory slogans were raised. No document in support of this has been produced on records. The only evidence allegedly to come on the record about the defamatory slogans and inflammatory speech can, therefore be spelt out from the evidence which R. K. Sen Gupta the only management witness on whom the enquiry officer and the disciplinary authority have relied. He has though produced a document listing slogans containing Murdabad, but in evidence he admits that he was ordered by the Managing Director/Chairman to prepare this document for the purpose of producing it before Mr. Nair; the Enquiry Officer. Thus this document was specifically prepared. It is not a contemporaneous document. Now Mr. Gupta when he appeared as witness for evidence was specifically asked what abuses had been given; his answer was

"JOhumse tukrayega choor choor ho jayega. Mohammed Yunus hai hai General Manager hai hai Tanashahi nahi chalegi Govnda gardi nahi chalet

This will show that the documents when were produced by Sen Gupta showing that the slogans raised include slogans of Murdabad were not stated by him in his evidence when he appeared as a witness. We are saying this to emphasise that the document like P-13 was specifically prepared under the instructions of the management as admitted by Sen Gupta . But thus alleged slogan is not mentioned to have been raised when the witness gave evidence. Even P-13 document mentioned that the points raised at the meeting dealt with the normal grievances like seniority .recruitment and other discriminatory practice of the management and insistence for their demands to be accepted. Gathering was completely peaceful and dispersed peacefully as is the cadence (if all the witnesses of the management. In this context there can be no basis for material to hold that the conduct or the demonstrate on was an act subversive of discipline and good behavior within Rule 5(20). The Enquiry Officer in his report has found that the witnesses produced by the petitioner have all stated that he did not make any inflammatory speech ana also did not speak any defamatory slogans. The Enquiry Officer also found that as regards defamatory slogans and speeches it is very difficult to establish these charges fully on account of the very nature of the charges against the petitioner, no employee of the authority is likely to give evidence against them. We do not in any way countenance the shouting of defamatory or inciting slogans but we cannot on the material on record hold that any such slogans esp. of "Murdabad" were raised The record is bereft of any evidence to show that the purpose of demonstration was subversive The meeting was attended by 99 percent of the staff members which dispersed peacefully immediately when the lunch hour was over.. It is possible that during the course of speech or demonstration some kind of slogans which may not be very proper may have been raised. But then this country recognises the holding of demonstration and though one may not be very happy that sometimes demonstrations may use a language which is not very polite one cannot also ignore that in the heat of movement and when mass of people arc raising slogans in suppose of their demands and more so when they feel that for over two years the demands have not been fuelled it is possible that some kind of harsh words and slogans may have been raised. But all this is a far cry from the charge which had been necessary to be proved before the petitioner can be held guilty the these slogans and their action was subversive of discipline. One or two slogans even if torching on the border of permissive parameters cannot be torn out of their context and considered in isolation. In order to appreciate the impact of any slogan the total over all picture must be kept in view and when we look at that picture it is peaceful meeting of the employees held in dignified manner rising their demands no doubt also shouting slogans, but mostly in support of their union and demands. The facts even as found by the Enquiry Officer do not .in any manner prove the charges against the petitioner. It is no longer in dispute that under .Article 226 of the Constitution the High Court has jurisdiction

to enquiry whether the conclusion of the Government in the said proceeding, which is the basis of his dismissal is based on no evidence, a writ of certiorari can Issue .

(28) As we have hold, that holding of meeting and demonstration is a fundamental right of the petitioner and that the permission must be implied to have been given there was no case to hold him guilty under Rule 5(21). There was no order of which any willful insubordination can be said to have taken place and Therefore Rule 5(6) was not attracted. We have already held that the slogans raised are not such as to cross the permissible parameters and Therefore any violation of Rule 5(20) does; not arise. The result is that we find that the charges on which the petitioner has been proceeded against namely under Rules 5(6), (20) & (21) have not been proved against the petitioner. On that account the impugned action taken, against the petitioner is hereby quashed and as result the order of removal passed against the petitioner is also hereby quashed and set aside.

(29) Mr. Punjwan"s suggestion that if we hold that the enquiry was not properly held or proper opportunity denied we should remit the matter back giving further opportunity on the analogy of the court remitting the matter to Industrial Tribunal as was done in the case of does no appeal to us. As we are also holding that the decision of the management that charges have been. proved is based on no evidence, the suggestion of Mr. Punjiwala really amounts to permitting the management to fill up the lacuna and have a fresh chance to prove his case. It is only where the management had been able to prove his case on record, but no opportunity is given.. to the employee to lead the defense to rebut the charges that fairness to the employees" demands a fresh .enquiry. But not in the present case .where even without a full opportunity having been given to the employee, the management has failed on the basis of its own material to prove the charge. Here is a .case where on record there is nothing for the employee to answer or rebut. Why .should he then be penalised to the tortuous process of a forbids second enquiry. This convention is Therefore repelled

(30) The next contention of Mr. Punjiwani is that even if the removal is held to be illegal ,as we do, no order of reinstatement should be made, is plainly untenable "because it is well settle that in the matter of public employment if the termination is held to be bad, in view of the latest decisions in cases a declaration can be granted that the man continues to be in service. Similarly ordinarily, it is well settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and Therefore, it must as a necessary corollary follow that he will been titled to all the back wages on the footing that he has continued to be m service uninterruptedly .

(31) The law is now well settled that ordinarily a workman whose services have been illegally terminated either by dismissal, discharge or retrenchment will be entitled to reinstatement with full back wages except to the extent that he was

gainfully employed during the enforced idleness. That is the normal rule.

(32) Plain common sense dictates that the removal of an order terminating the services, of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to backwages, too, And also see.

(33) In the writ petition prayer, has been made that respondents 3 and 8 be directed to restore the petitioner to his service with the payment of entire arrears. Of course the stand of the respondent is that the removal is valid. But no averment is made that even if the petitioner could claim reinstatement, he was not entitled to backwages. Now the principle is that when an employee after protracted litigation with the employer succeeds in showing that the termination of his services was justified he would normally be entitled to reinstatement with full back wages excepting of course if it could be shown that he had been gainfully employed in the meanwhile. Thus full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure," (Management of .

(34) Thus if the employer wishes to show that workman was gainfully employed he must establish and prove that fact no presumption of being gainfully employed can be raised", (See Ram Kumar's case supra).

(35) Thus it is beyond dispute that in view of our finding that the petitioner's services were illegally terminated, he has a right to be reinstated with full back wages subject of course to any deduction if he has been gainfully employed during the period he has been out of service.

(36) In this case the petitioner has filed an affidavit dated 27-9-1984 that during this period he was not working anywhere nor had he been gainfully employed. All that is stated in the counter affidavit dated 19-10-1984 is that the petitioner is having 30 bighas of agricultural land and a house and the petitioner gets income of Rs. 2000 per year and it is only natural that he should have been earning his livelihood by doing day to day labour. The petitioner has filed a rejoinder where he has again reiterated that he has not worked during this period and has also stated that he is a member of Hindu undivided family which owns the agricultural land and cannot be taken into account for the purpose of any deduction. The petitioner was kept out of employment. The respondent on whom the onus lay to show that he was gainfully employed during this period has failed to do so. There is thus no question of any deduction. The petitioner Therefore would be entitled to reinstatement with full back wages and other consequential benefits for the period he has remained out of service. We may mention that the respondent had filed an application seeking to cross-examine the petitioner. We see no justification for this. A statement having been made by the petitioner that he was not employed elsewhere and the respondent not having been able to point any specific material to show to the contrary- no question of cross-examination arises.

OUR conclusion Therefore is as follows

THE charges on which the petitioner has been proceeded against namely under Rules 5(6), (20) and (21) have not been proved against the petitioner.

2.The Trade Fair Authority of India is a State within the meaning of Article 12 of the Constitution and is Therefore amenable to the jurisdiction of this court under Article 226 of the Constitution.

3.The employees of the Trade Fair Authority of India are in public employment. This necessarily implies that before any adverse action in the nature of dismissal etc. is taken against such an employee, principles of natural justice which require fair hearing including the right to cross-examine the witnesses produced by the management must be complied with.

4.It would as a rule follow that such employee whose services have been illegally terminated either by dismissal, discharge or retrenchment will be entitled to reinstatement with full back wages except to the extent that he was gainfully employed during the enforced idleness.

5.However, if the employer wishes to "how that workman was gainfully employed he must establish and prove that fact, no presumption of being gainfully employed can be raised.

(37) The result is that this petition is allowed with costs. The impugned order of termination of service of the petitioner is quashed and set aside. The petitioner is directed to be reinstated with full back wages and allowances with other consequential benefits. Counsel's fee Rs. 500.

(38) We may mention that during the course of hearing the respondent authority had moved a number of applications. The purpose of these applications was to seek permission to cross-examine the petitioner for the purposes of showing that he had worked during the period the petitioner was out of employment. We have already given reasons that we see no justification for allowing cross-examination of any of the petitioners because no material has been provided. The other applications seeking permission to raise additional grounds why reinstatement should not be ordered and why the court should not exercise its powers; are all matters on merits which have been dealt with in the judgment. We Therefore see no necessity of passing any separate order on each of the applications. All these applications I will be deemed to have been disposed of in terms of our reasons given in the judgment.

(39) The petition as mentioned above is allowed with costs.