
(1952) 08 MAD CK 0004
In the Madras High Court
Case No : Writ Petition No. 296 of 1951

South India Bank Ltd.

APPELLANT

Vs

T.D. Pichuthayappan and Another

RESPONDENT

Date of Decision : 13-08-1952

Acts Referred:

Constitution of India, 1950 — Article 14

Tamil Nadu Shops and Establishments Act, 1947 — Section 41

Citation : AIR 1953 Mad 326 : (1953) 1 MLJ 306

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : K.V. Venkatasubramaniam Aiyar and T.P. Gopala Krishnan, for the Appellant; S. Mohan Kumaramangalan, A. Ramchandran for Row and Reddy and Vepa Sarathi, for Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This is an application for issuing a "writ or certiorari" to quash the order of the Additional Commissioner for Workmen's

Compensation, Madras, dated 23rd July 1951. The petitioner is the South India Bank Ltd. Respondent 1 was a clerk in the office of the petitioner.

On 25-9-1950 he was served with a notice of termination of his employment. In the said notice it was stated that on account of retrenchment his

services were terminated with effect from 1-10-1950. On 18-10-1950 he preferred an appeal u/s 41(2), Madras Shops and Establishments Act,

1947 (hereafter called the Act) to the Labour Commissioner, Madras, Questioning the validity of the termination of service. The Additional

Commissioner for Workmen's Compensation, after making the prescribed enquiry and after hearing the parties, held that the discharge of the

applicant was not for a reasonable cause and set aside the order of the bank

discharging the petitioner. The bank filed the aforesaid writ for quashing that order.

2. Learned counsel for the petitioner made a three-pronged attack on Section 41 of the Act based on Article 14 of the Constitution of India which guaranteed to every person equality before the law and equal protection of the laws in the territory of India. It was said that the provisions of the Act made a discrimination between employee and employer & employer & also conferred on the Commissioner a naked arbitrary power to interfere with the right of the employer to discharge the employee. To appreciate the contentions raised, it will be convenient at the outset to read the relevant sections of the Act and to consider the case law on the subject. Section 2(5):

"Employer" means a person owning, or having charge of, the business of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment;

Section 2(3): "'Commercial establishment'" means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, brokers' office or exchange and includes such other establishment as the Provincial Government may by notification declare to be a commercial establishment for the purposes of this Act.

Section 2(12): "'Person employed'" means (iii) in the case of a commercial establishment other than a clerical department of a factory or an industrial undertaking a person wholly or principally employed in connexion with the business of the establishment, and includes a peon;

Section 5: Notwithstanding anything contained in Section 4, the Provincial Government may, by notification apply all or any of the provisions of this Act to any class of persons or establishments mentioned in that section, other than those mentioned in Clauses (c) and (f) of Sub-section (1), and modify or cancel any such notification.

Section 6: The Provincial Government may, by notification exempt either permanently or for any specified period, any establishment or class of establishments, or person or class of persons, from all or any of the provisions of this Act, subject to such conditions as the Provincial Government

deem fit.

Section 41(1): No employer shall dispense with the service of a person employed continuously for a period of not less than six months, except for

a reasonable cause & without giving such person at least one month's notice or wages in lieu of such notice, provided, however that such notice

shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence

recorded at an inquiry held for the purpose.

The Act was passed to provide for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other

establishments and for other purposes, the Act was conceived and enacted to improve the conditions of the employees of the particular class of

establishments under private control. u/s 41, the validity whereof is now questioned, a person employed in an establishment defined in the Act is

given protection against arbitrary determination of his services. He is also given a right of appeal to the authority prescribed in the Act. I shall revert

to the subject of validity after noticing some of the leading American cases cited at the Bar.

3. The relevant provision of the Constitution is Article 14. It declares:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The phrase "equality before the law" occurs in all written Constitutions; but the phrase "equal protection of the laws" is adopted from the

constitution of the United States -- see Article 14 of the Amendment of the Constitution of the United States of America. Article 14 says:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive

any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In --"William Adair v. United States", (1908) 52 Law Ed. 436, the question raised was the constitutionality of certain provisions of the Act of

Congress concerning carriers engaged in interstate commerce and their employees. No employer shall threaten an employee with loss of

employment or unjustly discriminate against any employee because of his membership in labour corporations, associations or organisations. William

Adair discharged the employee, O. B. Coppage, because of his membership in a labour organisation. He was, therefore, charged for unjustly

discriminating against an employee of a common carrier and an employer engaged in interstate commerce because of his membership in a labour

organisation. The question was whether the impugned Part of the tenth section of the Act was repugnant of the Fifth Amendment to the

Constitution declaring that no person shall be deprived of liberty or property without due process of law. It may be mentioned that the Fifth

Amendment of the Constitution does not provide for "equal protection of the laws". The Supreme Court, therefore, was investigating in that case

whether the right of property and personal liberty were violated by Article 14. Harlan J. laid down the scope of the Fifth Amendment at page 441

as follows:

In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that

Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labour of others, and equally the right to make

contracts for the sale of one's own labour; each right, however, being subject to the fundamental condition that no contract, whatever its subject-

matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order,

or as detrimental to the common good. This Court has said that in every well-ordered society, charged with the duty of conserving the safety of its

members, the rights of the individual in respect of his liberty may, at times, under the pressure of great dangers, be subjected to such restraint, to be

enforced by reasonable regulations, as the safety of the general public may demand.....

4. To put it shortly, they approach the question from two aspects: 1. Whether the impugned section deprived the liberty of property without due

process of law; and 2. Whether the restrictions imposed are reasonable regulations under what is technically called as the "police power" in

America. The passage strongly relied upon by the learned counsel may now be extracted. At page 442 Harlan J. observed:

While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is

subject to such reasonable restraints as the common good or the general welfare may require, it is not within the function of government -- at least, in the absence of contract between the parties -- to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labour upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labour to prescribe the conditions upon which he will accept such labour from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant, Adair -- however unwise such a course might have been -- to discharge Copping because of his being a member of a labour organisation as it was the legal right of Copping, if he saw fit to do so, -- however unwise such a course on his part might have been, -- to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labour organisation. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no Government can legally justify in a free land.

I have quoted the passage in extenso as this passage was the sheet anchor of the learned counsel's argument. The Supreme Court held that there was no such connection between inter-state commerce and membership of a labour organisation as to authorise Congress by the Act to make it a crime against the United States for an agent or officer of an inter-state carrier having full authority in the premises from his principal, to discharge an employee from service to such carrier, because of the membership on his part. In the aforesaid passage itself the Supreme Court recognised the right of the Congress to put reasonable restraints as the Common good or general welfare may require, but having regard to the facts of that case they held that the said restrictions would not come within the "police powers" of the State. Apart from the fact that that decision does not turn upon the phrase "equal protection of the laws" for that phrase is not found in the Fifth Amendment, it is only an authority for the position that the

Impugned section is an arbitrary interference with the liberty of contract in cases where the restriction so imposed does not come under the police

power of the State. Under the Indian Constitution, liberty of contract is not one of the fundamental rights in Chapter 3.

In --"T. B. Coppage v. State of Kansas", (1915) 59 Law Ed. 441. the Supreme Court considered the scope of the 14th Amendment. There a

person was convicted by the Kansas Chief State Court under information charging violation of a statute of a State forbidding employers to exact a

promise not to join or retain membership in a labour organisation as a condition of securing or retaining employment. The Supreme Court of the

United States set aside that order. The Supreme Court accepted the principles laid down in -- "William Adair v. United States", (1908) 52 Law

Ed 436 and restated them at page 446 in the following manner:

The principle is fundamental and vital.. Included in the right of personal liberty and the right of private property -- partaking of the nature of each--

is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labour and

other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial

impairment of liberty in the long-established constitutional sense. The right is as essential to the labourer as to the capitalist, to the poor as to the

rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money.

An interference with this liberty so serious as that now under consideration, and so disturbing of equality of right, must be deemed to be arbitrary,

unless it be supportable as a reasonable exercise of the police power of the State."" At page 447 they again reiterated the principle-of police power:

We need not refer to the numerous and familiar cases in which this court has held that the power may properly be exercised for preserving the

public health, safety, morals or general welfare, and that such police regulations may reasonably limit the enjoyment of personal liberty, including

the right of making contracts.

The decision accepted two concepts:

1. The right of personal, liberty and private property including the right to make contracts for acquisition of property, and

2. The power of the State to impose reasonable restriction of that right in exercise of the police power.

This decision also does not purport to deal with the ambit and the limits" of the phrase ""equal protection of the laws"". On the facts of the case it

was held that the impugned Act could not be sustained on the Police power of the State.

5. In -- "Williams Truax v. Michael Corrigan", (1921) 66 Law Ed 254, the Supreme Court considered the scope of the phrase ""equal protection

of laws"". There a dispute arose between the pltfs. & the defendants Union concerning the terms and conditions of employment of the members of

the Union. As the plaintiffs refused to. yield to the terms of the Union, the Union ordered a strike. To win the strike & to coerce & compel the

plaintiffs to comply with the demands of the union, the defendants and others, unknown to the plaintiffs, entered into a conspiracy and boycott to

injure plaintiffs, in their restaurant and restaurant business, by including plaintiffs" customers and others theretofore well and favourably disposed: to

cease to patronise or trade with the plaintiffs. To achieve that object they resorted to picketing, displaying banners, advertising the strike,

denouncing plaintiffs and circulating handbills containing abusive and libelous charges against the plaintiffs etc. The defendants relied for immunity

on 1494 of the Revised Statutes of Arizona, 1913 which says:

No restraining order or injunction shall be granted by any Court of this State, or a Judge or the Judges thereof, in any case between an-employer

and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment,

involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or

to a property right of the party making the application, for which injury there is no adequate remedy at law..... And no such restraining order or

injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labour, or

from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person

resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully

persuading any person, to work or to abstain from working, or from ceasing to patronise or to employ any party to such dispute; or from

recommending, advising or persuading others by peaceful means so to do.

6. The Supreme Court held that the prohibition contained in the aforesaid section against interference by injunction between employers and

employees in cases growing out of a dispute concerning terms or conditions of employment denies equal protection of the laws when applied to

defeat injunctive reliefs which under the local statutes would have been proper had the controversy been any other than between employers and

former employees. At page 262 Taft C. J. brought out in bold relief the distinction between the scope of the 14th Amendment and the 5th

Amendment in the following terms:

This brings us to consider the effect in this case of that provision of the 14th Amendment which forbids any State to deny to any person the equal

protection of the laws. The clause is associated in the Amendment with due process clause, and it is customary to consider them together. It may

be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not

conterminous. The due process clause brought down from Magna Charta was found in the early state constitutions and later in the 5th Amendment

to the Federal Constitution as a limitation upon the executive, legislative and judicial powers of the Federal Government, while the equality clause

does not appear in the 5th Amendment and so does not apply to congressional legislation. The due process clause requires that every man shall

have the protection of his day in Court, & the benefit of the general law, -- a law which hears before it -- condemns, which proceeds not arbitrarily

or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under

the protection of the general rules which govern society. It, of course, tends to secure equality of law in the sense that it makes a required minimum

of protection for every one's right of life, liberty, & property, which the Congress or the Legislature may not withhold. Our whole system of law is

predicated on the general fundamental principle of equality of application of the law. "All men are equal before the law"; this is a Government of

laws, and not of men; "No man is above the law" -- are all maxims showing, the

spirit in which Legislatures, executives and Courts are expected to make, execute and apply laws. But the framers and adopters of this Amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty. The guaranty was aimed at undue favour and individual or class privilege, on the one hand & at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process. The 14th amendment does not prohibit legislation which, is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges confirmed and in the liabilities imposed. Thus, the guaranty was intended to secure equality of protection not only for all, but against all similarly situatedEqual protection of the laws is a pledge of the protection of equal laws.

At page 284 the learned Judge elaborated the scope of the 14th Amendment in this way:

The 14th Amendment, as this Court said in --"Barbier v. Connolly", 1885 113 U.S. 27 already cited intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; "that they should have like access to the Courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances..... .

Having regard to the aforesaid principles, the Supreme Court held that the impugned section offended the provisions of the 14th Amendment.

7. In "Yick Wo v. Hopkins", (1336) 30 Law Ed 220, the Supreme Court considered the question of administrative arbitrariness in enforcing the law which was otherwise fair. One Yick Wo was deprived of his personal liberty by

the Sheriff of the City and county of San Francisco. The

Sheriff stated that he held the petitioner in custody by virtue of a sentence of the police Judge's court whereby he was found guilty of violation of

certain ordinances of the Board of supervisors of that county and adjudged to pay a fine, and in default of payment, be imprisoned in the county

jail. Under the ordinances the board of supervisors have a discretion for granting or withholding their assent to the use of wooden buildings as

laundries, to be exercised in reference to the circumstances of each case, with a view to the protection of the public against the dangers of fire.

There is nothing in the ordinance which points to such a regulation of the business of keeping and conducting laundries. They conferred a naked

and arbitrary power to give or withhold consent, not only as to places, but as to persons. Matthews J. in dealing with the validity of the said

ordinances, cited with approval the following passage from the judgment of the Court of Appeal of Maryland in the case of --"Baltimore v.

Redecke", 49 Md 217,

But it commits to the unrestrained will of a single public officer the power to notify every person who now employs a steam engine in the

prosecution of any business in the City of Baltimore, to cease to do so, and by providing compulsory fines for every day's disobedience of such

notice and order or removable renders his power over the use of steam in that city practically absolute, so that he may prohibit its use altogether.

But if he should not choose to do this, but only to act in particular cases, there is nothing in the ordinance to guide or control his action. It lays

down no rules by which its impartial execution can be secured or partiality and oppression prevented. It is clear that giving and enforcing these

notices may, & quite likely will, bring ruin to the business of those against whom they are directed, while others, from whom they are withheld, may

be actually benefited by what is thus done to their neighbours; and, when we remember that this action or non-action may proceed from enmity or

prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives easy of concealment and difficult to be

detected and exposed it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power,

for that becomes apparent to everyone who gives to the subject a moment's

consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void.

8. The learned Judge applied the aforesaid principles to the Ordinances in question and proceeded to observe:

In the present cases, we are not obliged to reason from the probable to the actual and pass upon the validity of the ordinances complained of, as

tried merely by the opportunities which their terms afford, or unequal and unjust discrimination in their administration. For the cases present the

ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to

warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities

charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by

the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the

Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is

applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations

between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.""

It was, therefore, held that the ordinances were invalid and the imprisonment based upon them was illegal. This judgment is a leading authority

which establishes that a law, though apparently fair, but possessing inherent possibilities for illegal discrimination in its application, is void.

9. The Supreme Court of India had to advert to this aspect in dealing with the question of the validity of Section 5(1), West Bengal Special Courts

Act (10 of 1950) in -- "State of West Bengal v. A. A. Sarkar", 1952 S.C.J. 55. The Court by a majority, the Chief Justice dissenting, held that the

section was constitutionally bad. The learned Judges in different judgments elaborately considered the scope and the application of the fundamental

rights guaranteed under Article 14 to the facts of the case before them. "Classification" has been defined by Bose J. in the following words;

What after all, is classification? It is merely a systematic arrangement of things into groups or classes, usually in accordance with some definite

scheme. But the scheme can be anything and the laws which are laid down to govern the grouping must necessarily be arbitrarily selected; also,

granted the right to select, the classification can be as broad based as one pleases, or it can be broken down and down until finally just one solitary

unit is divided off from rest. Even those who propound this theory are driven to making qualifications. Thus, it is not enough merely to classify but

the classification must not be "discriminatory", it must not amount to "hostile action", there must be "reasonable grounds for distinction", it must be

"rational" and there must be no "substantial discrimination"

Chandrasekhara Aiyar J. at page 93 makes the following remarks in respect of a statute conferring uncontrolled power on the executive;

Discrimination may not appear in the Statute itself but may be evident in the administration of the law. If an uncontrolled or unguided power is

conferred without any reasonable and proper standards or limits being laid down in the enactment, the Statute itself may be challenged not merely

the particular administrative act.

As regards classification, Mahajan J. said at page 70:

By the process of classification the State has the power of determining who should be regarded as a class for purposes of legislation & in relation

to a law" enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the

liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to

other persons. The classification permissible, however, must be based on some real and substantial distinction bearing a just and reasonable

relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification thus means segregation

in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean

herding together of certain persons and classes arbitrarily.

In -- "Gulf, Colorado and Santa fe Railway Co. v. W. H. Ellis" (1897) 41 Law Ed 666, Brewer J. of the Supreme Court of America held that a

state statute imposing attorney's fee not exceeding 10 Dols. in addition to costs

upon railway corporations omitting to pay certain claims after

certain time after presentation, which applied to no other corporations or individuals, was constitutional as denying to them equal protection of the

laws. At page 637, Brewer J. said:

The act singles out a certain class of debtors, and punishes them when for like delinquencies it punishes no others. They are not treated as other

debtors, or equally with other debtors. They cannot appeal to the Courts as other litigants under like condition and with like protection. If litigation

terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favour, they recover no

attorneys' fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the Courts upon

equal terms. They must pay attorneys' fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if

wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal

before the law. They do not receive its equal protection.

The learned Judge proceeded to state at page 672:

It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the 14th Amendment,

and that in all cases, it must appear not only that a classification has been made but also that it is one based upon some reasonable ground---some

difference which bears a just and proper relation to the attempted classification--and is not a mere arbitrary selection.

10. In -- "Connolly v. Union Sewer Pipe Co.", (1902) 46 Law Ed 679, Harlan J. stated the law as follows:

The 14th Amendment, in declaring that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any

person within its jurisdiction the equal protection of the laws, undoubtedly intended, not only that there should be no arbitrary deprivation of life or

liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of

their personal and civil rights; that all persons should be equally entitled to pursue their happiness & acquire & enjoy property; that they should

have like access to the courts of the country for the protection of their persons

and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences.

It is not necessary to multiply cases, for they only "reiterate and reaffirm the principles so well stated in the cases already referred to.

11. The law on the subject may now be summarised. "All persons are equal before the law" is fundamental of every civilized Constitution. Equality

before law is a negative concept; equal protection of laws is "a positive one. The former declares that every one is equal before law, that no one

can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates an equal protection of all

alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities

imposed. It has also been held -- for without that apparently just laws may in their application be so abused as to subvert the fundamental concept

of equality before law -- that the law should be applied by public authority without arbitrariness or discrimination. The law though apparently fair

but contains inherent possibilities for discrimination and arbitrary action, is in itself bad. But these propositions conceived in the interests of the

public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure it is well nigh impossible

to make laws suitable in their application to all persons alike. So a reasonable classification is not only permitted but is necessary if society should

progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of, and the purpose

for which, it is made. Further, the Supreme Court of America evolved the doctrine of police power which enables the State to prescribe

regulations to promote the health, peace, morals and good order of the people. But the Indian Constitution does not recognise any such power in

the State but specifically prescribed the circumstances and to the extent the

fundamental rights recognised can be restricted in the interests of the public.

12. Applying the aforesaid principles, I shall now consider whether Section 41 of the Act offends the provisions of Article 14 of the Constitution of

India. The object of that section is to prevent the arbitrary dismissal of the employees. Under the section, the employer cannot dispense with the

service of a person employed for a continuous period of not less than six months except for reasonable cause. He is also bound to give one

month's notice or wages in lieu of such notice. But such a notice is not necessary if the employee is found guilty of misconduct after due enquiry.

The employee is given a right of appeal to the authority prescribed. Learned counsel argued that this section discriminates the employers from the

employees. The discrimination pointed out is that the employee can resign with impunity, whereas the employer can discharge the employee only

for reasonable cause or for proved misconduct, and that subject to an appeal to the prescribed authority. Can this differentiation of treatment

between the two be justified on the principle of reasonable classification? Ordinarily, the employer has the right to discharge the employee and the

employee has the right to resign from the employment. This right is the subject matter of the legislation. There are obvious differences between the

two classes of persons which do not yield to common treatment; one is rich, the other is poor; one is powerful, the other is weak; one can dispense

with the service of another and reappoint another in his place without detriment to his interest, but the other, if discharged, may have to starve and

go without any appointment. The purpose of the law is to protect this class of employees from the arbitrary action of the employers. I have

therefore no hesitation to hold that the classification is based upon the differences pertinent to the subject matter and the purpose of the legislation.

13. It was then contended that the section also makes an unreasonable discrimination between the employer defined under the Act and the

employers to whom the Act does not apply. The argument was that the law hits only the class of employers coming under the definition of the Act

and leaves the other class of employers unaffected, and, therefore, is discriminatory. This argument again ignores the subject matter of the

legislation and the purpose for which it is enacted. The preamble of the Act

shows that the Act was passed to provide for the regulation of conditions in shops, commercial establishments, restaurants, theatres and other establishments. Establishments are of various kinds. Some are controlled by the law of the State and the others function under statutory regulations, but there are many which are under private control such as shops, theatres, restaurants, private banks and firm carried on by individuals or group of individuals. These institutions are not controlled by statute either in their inception or during their progress. The employees are working under great hardships and the employers were directing their own terms. In view of the small establishments and the lack of organisation among the labourers, the employers were able to exercise arbitrary powers and were found not to care for the amenities of the employees. A separate Act, therefore, became necessary to regulate the conduct of this class of employees of private institutions. The Act prescribes for the opening and closing hours, daily and weekly hours of work, regulates the employment of children and young persons, provides for the health and safety of the employees, deals with their pay and allowances and lays down the conditions under which they can be discharged. I cannot, therefore, say that the separate treatment meted out to the employers coming under the definition of the Act is an arbitrary classification. The legislature having regard to all the aforesaid facts and the nature of the institutions, the arbitrary control exercised by the employers and the relief required by the employees, thought fit to make special provisions for this class of institutions and employers of those institutions. I cannot say that the classification has no reasonable basis, either in respect of the subject matter of the legislation or the purpose for which it was enacted.

14. In this connection the learned counsel had taken me through the various sections of the Act, particularly Section 6. It is true that the provisions defining "establishment" & "commercial establishment" are not artistically and precisely drafted and give ample scope for argument. It was said that the Government under the definition may declare any institution as an establishment under the Act. But the said clause can only be construed to mean that the Government can only declare similar institutions as establishments. u/s 6, the Provincial Government, by notification, may exempt certain establishments, or persons from the operation of the Act and it was said

that that conferred an arbitrary power on the Government and therefore is void. I am not concerned in this case with the validity or otherwise of Section 6 for nothing turns upon it in considering the validity of

Section 41 of the Act. They are not so related to each other that one cannot exist without the other.

15. Learned counsel then contended that the order in -question made by the Commissioner for Workmen's Compensation is arbitrary. The

employee was given notice to the effect that on account of retrenchment his services are dispensed with. Before the appellate authority, it was

contended for the employee that though there were many clerks who are admittedly junior to him, the establishment arbitrarily determined his

services, whereas it was argued on behalf of the Bank that his services were dispensed with as he was an unqualified person. But the

Commissioner pointed out that under the rules the Bank had reserved power to grant exemption in deserving cases and had exempted the

respondent and appointed him as Clerk some five years ago and therefore, it was not reasonable to discharge him on the ground of want of

qualification which they had waived. On the facts he came to the conclusion that the discharge of the employee was not for a reasonable cause.

The Commissioner had jurisdiction to decide u/s 41 whether the discharge of an employee was for reasonable cause or not, and having taken into

consideration the contentions advanced by either side, he came to the conclusion in favour of the employee. His finding is not liable to be

questioned.

16. Nor am I satisfied with the contention that Section 41 offends the provisions of Article 14 of the Constitution on the ground that it confers an

arbitrary power on the authority prescribed. No such arbitrary power has been conferred u/s 41. An appeal lies to the prescribed authority and the

prescribed authority has to decide on the merits whether the conclusion arrived at by the employer is correct or not. He is bound to dispose of the

appeal judicially and as an appellate tribunal. He is bound to give his reasons, as he has done so in this case, why in his opinion the order of the

employer is wrong. The power conferred upon the authority is, therefore, a quasi-judicial power which in the nature of things cannot be exercised

arbitrarily.

17. For the aforesaid reasons, I hold that the order of the Additional Commissioner is valid and not liable to be quashed. The application is, therefore, dismissed with costs. Advocate's fee Rs. 100.