SUREME COURT OF INDIA

Delhi Transport Corporation

Vs.

D.T.C. Mazdoor Congress

(Sabyasachi Mukharji CJI.,K. Ramaswamy, B.C. Ray, L.M. Sharma and P.B. Sawant JJ.)

04.09.1990

JUDGMENT

SABYASACHI MUKHARJI, CJ.

These civil appeals, special leave petitions and civil miscellaneous petitions deal with the question of constitutional validity of the right of the employer to terminate the services of permanent employees without holding any inquiry in certain circumstances by reasonable notice or pay in lieu of notice. The facts involved in these matters are diverse but the central question involved in all these is one, i.e. whether the clauses permitting the employers or the authori- ties concerned to terminate the employment of the employees by giving reasonable notice or pay in lieu of notice but without holding any inquiry, are constitutionally valid and, if not, what would be the consequences of termination by virtue of such clauses or powers, and further whether such powers and clauses could be so read with such conditions which would make such powers constitutionally and legally valid? In order to appreciate the question the factual matrix of these cases so far as these are relevant for the' determination of the aforesaid questions, will have to be borne in mind in the light of the actual legal provisions involved in the respective cases.

It will, therefore, be proper and appropriate to deal with the relevant facts in civil appeal No. 2876 of 1986 first. The appellant herein--the Delhi Transport Corpora- tion, is a statutory body formed and established under Section 3 of the Delhi Road Transport Act, 1950 read with Delhi Road Transport (Amendment) Act, 1971 (hereinafter called 'the Act'). The appellant carries out the objects of vital public utility, according to the appellant, i.e. transport of passengers in the Union Territory of Delhi and other areas. Respondent No. 2, Sri Ishwar Singh was appoint- ed as conductor therein on probation for a period of 1 year in 1970. The probation period was extended thereafter for a further period of one year and thereafter he was regularised in service of the appellant. Similarly, respondent No. 3--Sri Ram Phal was appointed as Assistant Traffic Incharge and after the probation period he was regularised in serv- ice. Respondent No. 4--Sri Vir Bhan was appointed as driver and after completing the probation period he was also regu- larised in service. It is stated that respondents Nos. 2 to 4 became, according to the appellant, inefficient in their work and started inciting other staff members not to perform their duties. They were served with termination notices on 4th June, 1985 under Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952. On 11th June, 1985 respondents Nos. 2 to 4 and their Union being respondent No. I-DTC Mazdoor Con- gress, filed writ petition No. 1422/85 in Delhi High Court, challenging the constitutional validity of Regulation 9(b) of the Delhi

Road Transport Act. On 11th May, 1986 the division bench of the High Court of Delhi allowed the said writ petition and struck down Regulation 9(b) of the said Regulations, and directed the appellant to pay back respondents' wages and benefits within 3 months from the date of the said judgment. This is an appeal, therefrom, by special leave. The question, therefore, is, was the High Court justified in the view it took? It may be mentioned that regulations 9(a) & (b) were framed in exer- cise of the powers conferred u/s 53 of the said Act, which enables the formulation of Regulations. Regulation 9 of the said regulations, which is material for the present contro- versy, reads as follows:

"9. Termination of service: (a) Except as otherwise speci- fied in the appointment orders, the services of an employee of the authority may be terminated without any notice or pay in lieu of notice:

(i) During the period of probation and without assigning any reason thereof.

(ii) For misconduct,

(iii) On the completion of specific period of appointment. (iv) In the case of employees engaged on contract for a specific period, on the expiration of such period in accord- ance with the terms of appointment.

(b) Where the termination is made due to reduction of estab- lishment or in circumstances other than those mentioned at (a) above, one month notice or pay in lieu thereof will be given to all categories of employees.

(c) Where a regular/temporary employee wishes to resign from his post under the authority he shall give three/one month's notice in writing or pay in lieu thereof to the Authority provided that in special cases, the General Manager may relax, at his discretion, the conditions regarding the period of notice of resignation or pay in lieu thereof." The said Regulation, as set out hereinbefore, deals with termination of services. Four contingencies are contemplated vide clause (a) of Regulation 9, whereupon the services of employees may be terminated without any notice or pay in lieu thereof except as otherwise provided in the appointment order. Apart from these four contingencies where termination is made due to reduction of establishment or in circumstances other than those mentioned in clause (a) above, one month's notice of pay in lieu thereof is required to be given to all categories of employees. Therefore, except in the said four cases, if there is reduction of establishment or there is any termination uncovered by these four contingencies referred to in clause (a) the same shall be by giving one month's notice or pay in lieu thereof to all categories of employees. Clause (c) postulates when a regular or temporary employee wishes to resign from his post under the authority then in such a situation one month's notice in writing or pay in lieu thereof to the authority may be provided.

The High Court in the judgment under appeal noted that since the filing of this petition the notices issued by D.T.C. to its various employees have been withdrawn and all these persons have been reinstated, therefore, the court was not concerned with the validity of clause (a) of Regulation 9 but respondents Nos. 2 to 4 against whom action had been taken by the appellant by issuing notices of termination under Regulation 9(b) had not been reinstated and the court considered the validity of Regulation 9(b). It was held by the court that the said provision gave absolute, unbridled and arbitrary powers to the Management to terminate the services of any permanent or temporary

employee. It was contended that such power was violative of Article 14 of the Constitution.

In support of this contention, reliance had been placed, on which the High Court also relied upon, on the decision of this Court in Workmen of Hindustan Steel Ltd. & Anr. v. Hindustan Steel Ltd. & Ors., [1985] 2 SCR 428. In that case, Standing Order 31 of M/s. Hindustan Steel Ltd., a public sector undertaking, had prescribed for a detailed procedure for dealing with cases of misconduct; and for imposing major penalty, the employer had to draw up a chargesheet and give an opportunity to the delinquent workman to make his repre- sentation within 7 days. If the allegations were controvert- ed, an enquiry had to be held by an officer to be nominated by the management and in such an enquiry reasonable opportu- nity of explaining and defending the alleged misconduct had to be given to the workman. Suspension of the delinquent workman pending enquiry was also permitted. At the end of the enquiry, if the charges were proved, and it was provi- sionally decided to impose any major penalty, the delinquent workman had to be afforded a further reasonable opportunity to represent why the penalty should not be imposed on him. Standing Order 32 provided for a special procedure in case a workman was convicted for a criminal offence in a court of law or where the General Manager was satisfied for reasons to be recorded in writing that it was inexpedient or against the interests of security to continue to employ the workmen' viz. the workman could be removed or dismissed from service without following the procedure laid down in Standing Order No. 31. There the appellant was an Assistant in the respondent's undertaking, who was removed from service on the ground that it was no longer expedient to employ him. The management dispensed with the departmental enquiry, after looking into the secret report of one of their officers that the appellant therein had misbehaved with the wife of an employee and that a complaint in respect thereof had been lodged with the po- lice. In the reference to the Industrial Tribunal, the Tribunal held that as the employer dispensed with the disci- plinary enquiry in exercise of the power conferred by Stand- ing Order 32, it could not be said that the dismissal was unjustified, and that if there were allegations of miscon- duct, the employer was quite competent to pass an order of removal from service without holding any enquiry in view of the provisions contained in Standing Order 32, and rejected the reference. There was an appeal to this Court. This Court held that the reasons for dispensing with the enquiry do not spell out what was the nature of the misconduct alleged to have been committed by the appellant and what prompted the General Manager to dispense with the enquiry. As there was no justification for dispensing with the enquiry, imposition of penalty of dismissal without the disciplinary enquiry as contemplated by Standing Order 31 was illegal and invalid. It was directed that the respondent should recall and cancel the order dated 24th August, 1970 removing the appellant from service, and reinstate him and on the same day the appellant was directed to tender resignation of his post which should be accepted by the respondent. The respondent should pay as and by way of back wages and future wages, a sum of Rs.1.5 lakhs to the appellant within 2 months which should be spread over from year to year commencing from the date of removal from service. It was reiterated that where an order casts a stigma or affected livelihood, before making the order, principles of natural justice of a reason- able opportunity to present one's case and controvert the adverse evidence must have full play. Even under the Consti- tution which permits dispensing with the inquiry under Article 311(2) a safeguard is introduced that the concerned authority must specify reasons for its decision why it was not reasonably practicable to hold the inquiry. Standing Order 32 nowhere obligates the General Manager to record reasons for dispensing with the inquiry as prescribed by Standing Order 31. On the contrary, it was held that the language of Standing Order 32 enjoins a duty upon the Gener- al Manager to record reasons for his satisfaction why it was inexpedient or against the interest of the security of the State to continue to employ the workman. Reasons for dispensing with the enquiry and reasons for not continuing to employ the workman, stand wholly apart from each other. This

Court finally observed that it was time for the public sector undertaking to recast Standing Order, and to bring it in tune with the philosophy of the Constitution failing which the vires of the said Standing Order ,would have to be examined in an appropriate proceeding.

Reliance was also placed before this Hon'ble Court on the decision of this Court in the case of West Bengal State Electricity Board and Others v. Desh Bandhu Ghosh and Oth- ers, [1985] 3 SCC 116, where this Court was concerned with regulations 33 and 34 of the West Bengal State Electricity Board. The said regulations 33(1) and 34 were as follows: "33(1) Unless otherwise specified in the appointment order in any particular case, the services of a permanent employee of the Board may be terminated without notice-- (i) on his attaining the age of retirement or by reason of a declaration by the competent medical authority that he is unfit for further service; or

(ii) as a result of disciplinary action;

(iii) if he remains absent from duty, on leave or otherwise, for a continuous period exceeding 2 years.

34. In case of a permanent employee, his services may be terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof." The High Court had come to the conclusion in that case that Regulation 34 was arbitrary in nature and suffered from the vice of enabling discrimination. The High Court, there- fore, struck down the first paragraph of Regulation 34 and as a consequence quashed the order terminating the services of the first respondent therein. It was contended before this court on appeal that the Regulation 34 did not offend Article 14 of the Constitution, that Sections 18-A and 19 of the Electricity Supply Act laid down sufficient guidelines for the exercise of the power under Regulation 34 and in any case the power to terminate the services of any permanent employee was vested in high ranking officials who might be expected to exercise the same in a reasonable way. This Court was unable to accept that argu- ment. This Court was of the view that the regulation was totally arbitrary and conferred on the Board a power which was capable of vicious discrimination. This Court was of the view that it was naked 'hire and fire' rule, the time for banishing which, according to this Court in the said deci- sion, altogether from employer-employee relationship was fast approaching. It is only parallel, this Court was of the view, to the Henry VIII clause so familiar to administrative lawyers.

Reference was made to the decision of this Court in Moti Ram Deka v. North East Frontier Railway, [1985] 5 SCR 683, where Rules 148(3) and 149(3) of the Indian Railway Estab- lishment Code had been challenged on the ground that these Rules were contrary to Article 311(2) of the Constitution. The challenge was upheld though no opinion was expressed on the question whether the rule offended Article 14 of the Constitution or not since then Article 14 has been inter- preted in several decisions of this Court and conferment and exercise of arbitrary power on and by the State or its instrumentalities have been frowned upon and struck down by this Court as offending Article 14 of the Constitution. Indeed, it was noted in S.S. Muley v. J.R.D. Tara, [1979] 2 SLR 438 by this Court that, Justice Sawant, of Bombay High Court had considered at great length Regulation 48(a) of the Air India Employees' Service Regulations which conferred similar power on the Corporation as Regulation 34 confers on the Board in the present case. The learned Judge therein (Sawant, J.) had struck down that Regulation. Reli- ance had also been placed on another decision of the Bombay High Court in the case of Manohar P. Kharkhar v. Raghuraj. [1981] 2 LLJ 459. This Court found it difficult to accept the reasoning therein. In that view of the matter the appeal was dismissed.

Reference in this connection may also be made to the decision of this Court in Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr., [1986] 3 SCC 156. There the appellant-Corporation was a Government company incorporated under the Companies Act. The majority shares of the Corporation were held by the States of West Bengal and Assam. Article 51 of the Articles of Association of the Corporation conferred upon the President of India power to issue directions/instructions regarding affairs and conduct of the business of the Corporation or of the Directors thereof as also regarding exercise and per- formance of its functions pertaining to national security and public interest. Article 51-A of the said articles entitled the President to call for returns, accounts etc. of the Corporation. Articles 14, 15, 16, 17 and 37 conferred on the President power to appoint and remove Chairman and the Board of Directors of the Corpora- tion. Articles 41 and 42 were regarding the' President's control over the working of the Corporation. Article 47 provided for appointment of the auditors of the Corporation to be made by the Central Government on the advice of the Comptroller' and Auditor-General of India and the nature of control to be exercised by the Comptroller and Auditor- General in the matter of audit and accounts. Since another company namely the Rivers Steam Navigation Co. Ltd. was carrying on the same business as the Corporation was doing, a Scheme of Arrangement was entered into between the Corpo- ration and that Company for dissolution of the latter and taking over of its business and liabilities by the former. The Scheme, inter alia, stipulated that the Corporation shall take as many of the existing staff or labour as were possible and that those who could not be taken over shall be paid by the transferor company all moneys due to them under the law and all legitimate and legal compensations payable to them either under Industrial Disputes Act or otherwise legally admissible and that such moneys shall be provided by the Government of India to the transferor Company who would pay these dues. The Calcutta High Court approved the Scheme. Each of the respondents therein were in the service of the said company. Their services were taken over by the Corpora- tion after the High Court's sanction to the Scheme of Ar- rangement. While the respondent Ganguly therein was appoint- ed as the Deputy Chief Accounts Officer and was later pro- moted as Manager (Finance), the respondent Sengupta was appointed as Chief Engineer (River Services) and was later promoted as General Manager (River Services)- Their appoint- ment letters were in stereotype forms under which the Corpo- ration could without any previous notice terminate their services, if the Corporation was satisfied that the employee was unfit medically or if he was guilty of any insubordina- tion, intemperance or other misconduct, or of any breach of any rules pertaining to this service or conduct or non- performance of his duties. The letters of appointment fur- ther stipulated that they would have been subject to the rules and regulations of Corporation. Rule 9(i) of the Corporation's Service, Discipline and Appeal Rules of 1979 had provided that the services of permanent employee could be terminated on three months' pay plus DA to the employee or on deduction of a like amount from his salary as the case might be in lieu of the notice. By confidential letter the respondent Ganguly was asked to reply within 24 hours to the allegations of negligence made against him. After having his representation and detailed reply, a notice under Rule 9(i) was served on him terminating his services with immediate effect by paying three months' pay. Similarly a charge-sheet was issued to the respondent Sengupta intimat- ing that a disciplinary inquiry was proposed against him under the Rules and calling upon him to file his written statement of defence. Sengupta denied the charges made against him and asked for inspection of documents and copies of statements of witnesses mentioned in the said charge- sheet. But a notice was serviced on him under Rule 9(i) terminating his services with immediate effect of paying three months' salary. Both Ganguly and Sengupta filed Writ Petitions before High Court. A Division Bench of that Court allowed the same. The Corporation filed appeals before this Court. The main questions for determination therein were (i) whether the appellant-Corporation was an instrumentality of the State as to be covered by Article 12 and 36 of the Constitution and (ii) whether an unconscionable term in a contract of employment

entered into with the Corporation was void under Section 23 of the Contract Act and violative of Article 14 of the Constitution and as such whether Rule 19(i) which formed part of the contract of employment be- tween the Corporation and its employees to whom the said Rules applied, was void? This Court confirmed the judgment of the High Court with modification in the declaration made and dismissed the Corporation's appeal to this Court. This Court held that the appellant was State within the meaning of Article 12 of the Constitution. This Court further held that an unconscionable bargain or contract is one which is irreconcilable with what is right or reasonable or the terms of which are so unfair and unreasonable that they shock the conscience of the Court. This Court was of the view that the doctrine of distributive justice is another jurisprudential concept which has affected the law of contracts. According to that doctrine, distributive fairness and justice in the possession of wealth and property could be achieved not only by taxation and regulatory control of private and contractu- al transactions even though this might involve some sacri- fice of individual liberty. This Court referred to articles 38 and 39 of the Constitution so far as the test of reasona- bleness was concerned. The test of reasonableness or fair- ness of a clause in a contract where there was inequality of bargaining power is another theory recognised in the sphere of law of contacts. It was reiterated in that decision that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or a clause in the contract. Reference was made to the observa- tions of Lord Diplock in A. Schroeder Music Publishing Co. Ltd. v. Macaulay (formerly Instone), [1974] i W.L.R. 1308 and that test was:

"Whether the restrictions are both reasonably necessary for the protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promiser under the contract? For the purpose of this test all the provisions of the contract must be taken into consideration."

Justice Madon of this Court in the said decision found that this was in consonance with right and reason, intended to secure social and economic justice and conformed to the mandate of the equality clause in Article 14 of the Consti- tution. It was further recognised that there might be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumer- ated nor fully illustrated. The Court must judge each case on its own facts and circumstances. The above principle would apply, this Court reiterated, where the inequality of bargaining power is the result of the disparity in the economic strength of the contracting parties or where the inequality is the result of circumstances, whether of the creation of the parties or not or where the weaker party is in a position in which he could obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them or where a man had no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in pre- scribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and uncon- scionable clause in that contract or form or rules might be. This Court, however, reiterated that this principle would not apply where the bargaining power of the contracting parties is equal or almost equal. This principle would not apply where both parties are businessmen and the contract is a commercial transaction. The contracts of this type to which the principle formulated above applied were not con- tracts which were tainted with illegality but were contracts which contained terms which were so unfair and unreasonable that they shock the conscience of the Court. In the vast majority of cases such contracts are entered into by the weaker party under pressure of circumstances, generally economic, which results in inequality of bargaining power. Such contracts will not fall within the four corners of the definition of "undue influence" given in Section 16(1) of the Contract Act, even though at times they are between parties one of whom holds a real or apparent authority over the other. Contracts in prescribed or standard forms or which embody a set

of rules as part of the contract are entered into by the party with superior bargaining power with large number of persons or a group of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest, should be adjudged void according to Justice Madon, under Section 23 of the Contract Act on the ground of being opposed to public policy. Public policy, it was reiterated, is not the policy of any particular Government. It connotes some matter which concerns the public good and the public interest. The principles governing public policy must be and are capable on proper occasion, of expansion or modification. If there is no head of public policy which covers a case, then the Court must in consonance with public conscience and in keeping with public goods and public interest declare such practice to be opposed to public policy. In any case which is not covered by authority, courts should be guided by the Preamble to the Constitution and the principles underlying the Fundamental Rights and the Directive Principles. Rule 9(i) can aptly be called 'the Henry VIII Clause" this Court opined therein. It confers an absolute, arbitrary and un- guided power upon the Corporation to exercise that power. This Court was concerned with the "Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules" framed by the Corporation. The relevant provisions of the said Rule 9 relating to permanent employees therein were as follows:

"9. Termination of employment for Acts other than misdemea- nour

(i) The employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The Company may pay the equivalent of three months basic pay and dearness allowances, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice. (ii) The services of a permanent employee can be terminated on the grounds of "services no longer required in the inter- est of the Company" without assigning any reason. A perma- nent employee whose services are terminated under this clause shall be paid 15 days' basic pay and dearness allow- ance for each completed year of continuous service in the Company as compensation. In addition he will be entitled to encashment of leave to his credit."

This Court found that Rule 9(i) can be called 'the Henry VIII Clause'. It confers an absolute,- arbitrary and unguided power upon the Corporation. It does not even say who on behalf of the Corporation was to exercise that power. While the Rules provided for four different modes in which the services of a permanent employee could be terminated earlier than his attaining the age of superannuation, namely, Rules 9(i), 9(ii), 36(iv)(b) read with 38 and 37, Rule 9(i) is the only rule which does not state in what circumstances the power conferred by that rule is to be exercised. Thus even where the Corporation could proceed under a regular disci- plinary inquiry, it is free to resort instead to Rule 9(i) in order to avoid the trouble of an inquiry. No opportunity of a hearing was at all intended to be afforded to the permanent employee whose service was being terminated in the exercise of that power. It violated audi alteram partem rule of natural justice also which was implicit in Article 14 of the Constitution. It is not covered by any of the situations which would justify the total exclusion of the audi alteram parterm rule. The view that the Board of Directors would not exercise this power arbitrarily or capriciously as it con- sisted of responsible and highly placed persons ignored, it was held, the fact that however highly placed a person might be, he must necessarily possess human frailties and "power tends to corrupt, and absolute power corrupts absolutely." It was, however, held that Rule 9(i) was also discriminatory for the Corporation was given power to discriminate between employee and employee. It was stated that it could back up one employee and apply to him Rule 9(i). It could pick up another employee and apply to him Rule 9(ii). It was further reiterated that the Corporation was a large organisation. The said Rules formed

part of the contract of employment between the Corporation and its employees who were not workmen. These employees had no powerful Union to support them. They had no voice in the framing of the said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There was gross disparity between the Corporation and its employees, whether they be workmen or officers. The Corporation could afford to dis- pense with the services of an officer and will find many others to take his place but an officer cannot afford to lose his job because if he does so, there are not many jobs waiting for him. It was, therefore, held that clause 9(i) of the said regulation was against right and reasons and it was wholly unconscionable. It had been entered into between parties between whom there was gross inequality of bargain- ing power. Rule 9(i) was a term of the contract between the Corporation and all its officers, it was noted. It affected a large number of persons and it squarely fell within the principle stated earlier. The Government and its agen- cies and instrumentalities constitute the largest employer in the country. A clause such as Rule 9(i) in a contract of employment, it was noted, affecting large sections of the public was harmful and injurious to the public interest for it tended to create a sense of insecurity in the minds of those to whom it applied and consequently against public good. Such a clause, therefore, was opposed to public policy and as such it is void under Section 23 of the Contract Act, it was held. It was further held that it was not possible to accept the contention that this was a contract entered into by the Corporation like any other contract entered into by it in the course of its trading activities and the Court, there- fore, ought not to interfere with it. The employees could not be equated with goods which could be bought and sold, nor could a contract of employment be equated with a mercan- tile transaction between two businessmen much less when the contract of employment was between a powerful employer and a weak employee. Although it was reiterated that the aforesaid rule 9(i) was supported by mutuality inasmuch as it con- ferred an equal right upon both the parties but considering the unequal position of the Corporation and its employees, there was no real mutuality, this Court opined. It was reiterated that the Corporation being covered by Article 12, its actions must also be in accordance with the Directive Principles prescribed by Part IV of the Constitution. Refer- ence may be made to paragraph 39 of the aforesaid decision where this Court noted that in the working of the Constitu- tion, it was found that some of the provisions of the Con- stitution were not adequate for the needs of the country or for ushering in a Welfare State and the constituent body empowered in that behalf amended the Constitution several times. By the very first amendment made in the Constitution, namely, by the Constitution (First Amendment) Act, 1951 clause (6) of Article 19 was amended with retrospectitive effect. Under this amemdment, sub-clause (g) of Article 19(1) which guarantees to all citizens the right to carry on occupation, trade or business, was not to prevent the State from making any law relating to the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial of citizens or otherwise. This amendment also validated the operation of all existing laws insofar as these had made similar provisions. Article 298 of the Constitution, as originally enacted, provided that the executive power of the Union and of each State was to extend, subject to any law made by the appropriate legis- lature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts. and it further provided that all property acquired for the purposes of the Union or of State was to vest in the Union or in such State, as the case might be. This Court referred to the decision of this Court in Sukhdev v. Bhagatrarn Sardar Singh Raghuvanshi, [1975] 3 SCR 619, "the Governing power wherever located must be subject to the fundamental constitutional limitations." The High Court in the judgment under appeal was unable to accept the plea of alternative remedy and allowed the Writ Petition and declared regulation 9(b) of the Regula- tions to be illegal and ultra vires and as a consequence thereof the orders terminating the services of respondents Nos. 1 to 4 were quashed

and these respondents were deemed to be in the service of DTC and back wages and all other benefits by way of annual increments were directed to be paid.

Learned Solicitor General of India contended before us that in the facts and the circumstances of this case, there was sufficient guideline in the Regulation 9(b) and the power of termination, properly read, would not be arbitrary or violative of Article 14 of the Constitution. It may be mentioned that under the general law of contract of employ- ment, which was commonly known as the 'law of master and servant', which is not termed as law of employer and employ- ee, whether the contract of service is for a fixed period or not, if it contained a provision for its termination by notice, it could be so terminated. If there was no provision for giving notice and the contract was not for a fixed period, the law implied an obligation to give a reasonable notice. Where no notice in the first case or no reasonable notice in the second case was given and the contract was wrongfully terminated, such wrongful termination would give rise to a claim for damages. In this connection, reference may be made to the observations of this Court in the five- judge bench decision in Union of India & Anr. v. Tulsi Ram Patel, [1985] Supp. 2 SCR 131 at p. 166. This is also the position at common law. See Chitty on Contract; 26th Edition Vol. II, p. 808 or 25th Edition Vol. II p. 712, paragraph 3490. In this connection, reliance may also be placed at paragraphs 607 and 608 of Volume No. 16, 4th Edition of Halsbury's Law of England.

Under the Industrial Law, subject to the relevant statu- tory provision, the services of an employee could be termi- nated by reasonable notice. In such a case it was always open to the Industrial Tribunal to examine whether the power of termination by reasonable notice was exercised bona fide or mala fide. If, however, the industrial Court was satis- fied that the order of discharge was punitive, that it was mala fide, or that it amounted to victimisation or unfair labour practice, the industrial court was competent to set aside the order and in proper cases, direct the reinstatement of the employee. Reference may also be made to the observations of this Court in Tata Oil Mills Co. Ltd. v. Workmen & Anr., [1964] 2 SCR 125 at 130. If, however, the exercise of such power was challenged on the ground of being colourable or mala fide or on account of victimisation or unfair labour practice, the employer must disclose to the Court the ground of his im- pugned action, so that the same may be tested judicially. See the observations of this Court in L. Michael & Anr. v. M/s Johnston Pumps India Ltd., [1975] 3 SCR 489 at 498. The relationship between a statutory corporation and its employees is normally governed by the relevant rules, regu- lations and standing orders. A statutory Corporation is "State" within the meaning of Article 12 of the Constitution and its action is subject to judicial review in certain cases and certain circumstances. In the facts and circum- stances of these cases, we have proceeded on that basis and we are of the opinion that it is the correct basis. The exercise of such power under regulations similar to the one impugned which has been upheld in various types of cases are instructive in their variety. It may be mentioned that the exercise of power under the very same Regulation 9(b) was upheld by the Court in a matter, wherein in an action by the employee of D.T.C., this Court in Delhi Transport Corpora- tion Undertaking v. Balbir Saran Goel, [1970] 3 SCR 757 at 764 held that even if the employees of the respondent thought that he was a cantankerous man and it was not de- sirable to retain him in service it was open to them to terminate his services in terms of Regulation 9(b) and it was not necessary to dismiss by way of punishment for mis- conduct.

Reliance was placed on this decision by the High Court in the Judgment under appeal. The High Court in our opinion rightly pointed out, however, that the decision was on a different basis and could not be availed of in deciding controversy involved in the present determination. In Air India Corporation, Bombay v. V.A. Rebellow & Anr., [1972] 3 SCR 606, this Court dealing with the

power of the Air India to terminate the services of a person who was alleged to have misbehaved with air hostesses, observed on page 6 16 of the report that the anxiety of the Legislature to effective- ly achieve the object of duly protecting the workmen against victimisation of unfair labour practice consistently with the preservation of the employer's bona fide right to main- tain discipline and efficiency in the industry for securing the maximum production in peaceful, harmonious atmosphere is obvious from the overall scheme of these sections. This Court on page 620 of the report observed that the record merely disclosed that the appellant had suspicion about the complainant's suit- ability for the job in which he was employed and this led to loss of confidence in him with the result that his services were terminated under Regulation 48. Loss of confidence in such circumstances could not be considered to be mala fide, it was held. Similarly in Municipal Corporation of Greater Bombay v. P.S. Malvenkar & Ors., [1978] 3 SCR 1000 at page 1006, where it was alleged that the services of an employee of Bombay Municipal Corporation were unsatisfactory, this Court held that the powers of dismissal after an inquiry and the powers of simpliciter termination are to distinct and independent powers and as far as possible neither should be construed so as to emasculate the other or to render it ineffective. One is the power to punish an employee for misconduct while the other is the power to terminate sim- pliciter the service of an employee without any other ad- verse consequence.

It may be mentioned that the case of civil servants is, however, governed by their special constitutional position which accords them status; the legal relationship (between the Government and its servants) is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of state are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. See the observa- tions of this Court in Roshan Lal Tandon v. Union of India, [1968] 1 SCR 185 at 195 D-E. But even then the services of a temporary civil servant (although entitled to the protection of Article 311 of the Constitution) is subject to termina- tion by notice. But beside the above, the government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. See the observa- tions of this Court in Champak Lal Chiman Lal Shah v. The Union of India, [1964] 5 SCR 190 at 204. The services of a temporary government servant, further. may be terminated on one month's notice whenever the government thinks it neces- sary or expedient to do so for administrative reasons. It is impossible, this Court observed, to define before hand all the circumstances in which the discretion can be exercised. The discretion was necessarily left to the Government. See observations of this Court in Ram Gopal Chaturvedi v. State of M. P., [1970] 1 SCR 472 at 475.

The aforesaid position of a government servant has been analysed in depth by the decision of this Court in Union of India v. Tulsi Ram Patel, (supra), where it was reiterated that the doctrine of pleasure is not a relic of the feudal ages or based upon any special prerogative of the Crown but is based on public interest and for the public good because it is as much in public interest and for public good that government servants who are inefficient, dishonest or cor- rupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and the Rules made under Article 309 and by Article 311 of the Constitution be not abused by them to the detriment of the public interest and public good. It was reiterated on page 190 of the report that if in a situation as envisaged in one of the three clauses of the second proviso to Clause (2) of Article 311 arises and the relevant clause is proper- ly applied and the disciplinary inquiry dispensed with, the concerned government servant cannot be heard to complain that he is deprived of his

livelihood. This Court reiterated that the livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for the public good, and the former must yield to the latter public policy, it was reit- erated, requires, public interest needs and public good demands that there should be such a doctrine. It was further reiterated that the rules of natural justice are not immuta- ble but flexible. These rules can be adopted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed. Not only, can the principles of natural justice be modified but in exceptional cases they can even be excluded. See the observations of this Court at page 237 G of the aforesaid report. Reference was also made to the observations of this Court at pages 214-215 of the aforesaid report. Thus, the Constitution Bench laid down that even where a government servant enjoys constitutional status there can be exclusion of inquiry in the cases prescribed for termination of employment. It must, however, be borne in mind that in some recent cases this Court has taken the view that a regulation pro- viding for the termination of the service of an employee of the public corporation by notice only or pay in lieu thereof is invalid under Article 14 of the Constitution. We have referred to the decisions of the Workmen of Hindustan Steel's case (supra); West Bengal State Electricity Board's case (supra) and Central Inland Water Transport Corpora- tion's case (supra). Mr. Ashok Desai, learned Solicitor General of India submitted that the decisions in the West Bengal State Electricity Board's (supra) and Central Inland Water Transport Corpora- tion's case (supra) were incorrectly decided and the deci- sion proceeded on the theory of unconscionable bargains and that termination by notice is against public policy. He, however, drew our attention to Gheru Lal Parekh v. Mahadeo- das Maiya & Others, [1959] Supp. 2 SCR 406 and 440 where it was held that though theoretically it may be permissible to evolve a new head under exceptional circumstances in a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads of avoidance of such clauses in these days. Furthermore, as stated above, learned Solicitor General submitted that in the ordinary law of contract termination of employment by reasonable notice on either side has never been regarded as unconscionable. Therefore, the learned Solicitor General submitted that this part of the above judgments was errone- ous and should be overruled.

It must, however, be noted that in a later judgment of this Court, which followed this line of reasoning, it was recognised that a public corporation requires protection from employees who are inefficient or those who lacked probity or even made faulty policy decisions. Reference was made to the decision of this Court in O.P. Bhandari v. 1. T.D.C. & Ors., [1986] 4 SCC 337 where this Court held that so far as some of the higher placed employees are concerned (described as 'gold collar' employees) public sector under- takings may be exposed to irreversible damage on account of faulty policy decisions or on account of lack of efficiency or probity of such employees and its very existence might be endangered beyond recall. A public corporation may not be able to cut the dead wood and get rid of a managerial cadre employee in case he is considered to be wanting in perform- ance or integrity. Reference may be made to page 343 para- graph 5 (supra) of the report. It may be mentioned that in Moti Ram Deka's case (supra) at p. 707 of the said report, a similar rule was considered by seven learned Judges in the context of government servants in Railway. The majority judgment did not express opinion on the question of the Railway rule being bad on the ground of unguided and uncana- lised power. In his judgment, Mr. Justice Das Gupta held that the rule gave no guidance and was, therefore, violative of Article 14. (See page 769 of the report). On this point Mr. Justice Shah, as the learned Chief Justice then was, in his judgment observed at page 799-800 of the aforesaid report:

"In considering the validity of an order an assumption that the power may be exercised mala fide and on that ground discrimination may be practised is wholly out of place. Because of the absence of specific directions in Rule 148 governing the exercise of authority conferred thereby, the power to terminate employment cannot be regarded as an arbitrary power exercisable at the sweet will of the author- ity, when having regard to the nature of the employment and the service to be rendered, the importance of the efficient functioning of the rail transport in the scheme of our public economy, and the status of the authority invested with the exercise of power would appropriately be exercised for the protection of public interest on grounds of adminis- trative convenience. Power to exercise discretion is not necessarily to be assumed to be a power which will invali- date the conferment of power. Conferment of power has neces- sarily to be coupled with the duty to exercise it bona fide and for effectuating the purpose and policy underlying the rules which provide for the exercise of the power. If in the scheme of the rule, a clear policy relating to the circum- stances in which the power is to be exercised is discerni- ble, the conferment of power must be regarded as being made in furtherance of the scheme, and is not open to attack as infringing the' equality clause. It may be remembered that the rules relating to termination of employment of temporary servants and those on probation, and even those relating to compulsory retirement generally do not lay down any specific directions governing the exercise of the powers conferred thereby. The reason is obvious: the appointing authority must in all these cases be left with discretion to determine employment having regard to the exigencies of the service, suitability of the employee for absorption or continuance in the cadre, and the larger. interest of the public being served by retaining the public servant concerned in service."

Learned Solicitor General submitted that the question is whether it is the very existence of power which is bad or the exercise is bad in any specific case. It was submitted that the Court would be entitled to obtain guidance from the preamble, the policy and the purpose of the Act and the power conferred under it and to see that the power is exer- cised only for that purpose. It was submitted that even if a statute makes no clarification Court would ascertain if the statute laid down any principle or policy. In such a case, the statute will be upheld although a given exercise may be struck down in particular cases. See the observations of this Court in Shri Ram Krishna Dalmia v. Justice Tandolkar, [1959] SCR 279 at 299. The guidance in the statute for the exercise of discretion may be found from the preamble read in the light of surrounding circumstances or even from the policy or the purpose of the enactment or generally from the object sought to be achieved. See the observations of this Court in Jyoti Prasad v. The Adminis- trator for the Union Territory of Delhi, [1962] 2 SCR 125 at 139. Even a term like 'public interest' can be sufficient guidance in the matter of retirement of a government employ- ee. See the observations of this Court in Union of India v. Col. J.N. Sinha & Anr., [1970] 2 SCC 458 at 461 and such a provision can be read into a statute even when it is not otherwise expressly there. Learned Solicitor General draw our attention to the observations of this Court in N.C. Dalwadi v. State of Gujarat, [1987] 3 SCC 611 paragraphs 9 and 10 at page 619. It is well settled and the learned Solicitor General made a point of it that the Court will sustain the presumption of constitutionality by considering matters of common knowledge and to assume every state of facts which can be conceived and can even read down the section, it was submitted, if it becomes necessary to uphold the validity of the provision. Reliance was placed on the decision of this Court in Commissioner of Sales Tax, M.P., Indore & Ors. v. Radhakrishan & Ors., [1979] 2 SCC 249 at 257.

In the case of Olga Tellis & Ors. etc. v. Bombay Munici- pal Corporation & Ors., [1985] Suppl. 2 SCR 51 at 89 this Court has held that considering the scheme of the act, a section which enabled the Commissioner to remove encroach- ment without notice must be read to mean that notice would be

given unless circumstances are such that it is not rea- sonably practicable to give it. This Court further held that the discretion is to be exercised in a reasonable manner so as to comply with the constitutional mandate that the proce- dure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of that inter- pretation because it helps to sustain the validity of the law.

Learned Solicitor General submitted that the appeal involved herein the power of Delhi Transport Corporation (a statutory corporation) regarding termination of service simpliciter under Regulation 9(b). These Regulations were framed as mentioned under Section 53 of the Delhi Road Transport Authority Act, 1950. The said Act was replaced by the Delhi Municipal Corporation Act, 1957 but the regula- tions have been saved and even though in 1971 a new Corpora- tion, viz. the Delhi Transport Corporation (the appellant), was constituted under the Road Transport Corporation Act, 1950, the regula- tions have been continued.

The guidelines for the exercise of such power, according to the Solicitor General, could be found in the statutory provisions of the 1950 Act under which the regulations have been framed, the preamble; Sections 19 and 20 (equivalent to Sections 18 and 19 of the Road Transport Corporation Act, 1950); Section 53 (equivalent to 45 of the Road Transport Corporation Act, 1950); the context of Regulation 9(b) read with 9(a) and 15. Even for the exercise of this power, reasons could be recorded although they need not be communi- cated. This will ensure according to the Solicitor General, a check on the arbitrary exercise of power and effective judicial review in a given case. The present regulations are parallel, to but not identical with, the exceptions carved out under Article 311(2) proviso. It was submitted that even the power of termination simpliciter under Regulation 9(b) can only be exercised in circumstances other than those in Regulation 9(a), i.e., not where the foundation of the order is 'misconduct'. The exercise of such power can only be for purposes germane and relevant to the statute. It was submit- ted by the learned Solicitor General that these would in- clude several cases which have been held by Courts to give rise to termination simpliciter including where the employee shows such incompetence or unsuitability as to make his continuance in employment detrimental in the interest of the Corporation, where the continuance of the employee is a grave security risk making his continuance detrimental in the interest of the Corporation, if there is a justifiable lack of confidence which makes it necessary in the interest of the Corporation to immediately terminate the services. These are illustrative and not exhaustive.

It was submitted by the learned Solicitor General that the above guidelines of recording reasons and confining action under Regulation 9(b) for purposes germane and rele- vant to the statute would prevent arbitrary action by the Corporation while enabling it to run its services efficient- ly and in public interest. Thus, there is no vice of arbi- trariness in the regulation. The judgment of the High Court, therefore, cannot and should not be upheld according to the learned Solicitor General.

In Civil Appeal No. 2876 of 1986, the learned Attorney General urged that the settled rule judicially evolved in matters of constitutional adjudication is that in order to sustain the constitutionality of legislation, the words of a statute may be qualified, its operation limited and condi- tions, limitations and obligations may be implied or read into the statute in order to make it conform to consti- tutional requirements. The underlying rationale, according to the learned Attorney General, of this rule of interpreta- tion, or the doctrine of reading down of a statute is that when a legislature, whose powers are not unlimited, enacts a statute, it is aware of its limitations, and in the absence of express intention or clear language to the contrary, it must be presumed to have implied into the statute the requi- site limitations and conditions to immunise it from the virus of unconstitutionality. From

what the learned Attorney General submitted and what appears to be the correct that every legislature intends to act within its powers. There- fore, in a limited Government, the legislature attempts to function within its limited powers. It would not, therefore, be expected to have intended to transgress its limits. In Re The Hindu Women's Rights to Property Act, [1941] FCR 12, the question before the Federal Court was about the meaning of the word 'property' in the Act. The Court limited the opera- tion of the word 'property' to property other than agricul- tural land because otherwise the Central Legislature would have had no competence to enact the statute. The Court observed at pages 26 and 27 of the Report as follows: "No doubt if the Act does affect agricultural land in the Governors' Provinces, it was beyond the competence of the Legislature to enact it: and whether or not it does so much depend upon the meaning which is to be given to the word 'property' in the Act. If that word necessarily and inevita- bly comprises all forms of property, including agricultural land, then clearly the Act went beyond the powers of the Legislature; but when a Legislature with limited and re- stricted powers makes use of a word of such wide and general import, the presumption must surely be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other. The question is thus one of construction, and unless the Act is to be regarded as wholly meaningless and ineffective, the Court is bound to construe the word 'property' as referring only to those forms of property with respect to which the Legislature which enacted the Act was competent to legis- late; that is to say, the property other than agricultural land ..... "

See also the observations of Chief Justice Gwyer at pages 27 to 29 of the Report on how legislations of legisla- ture with limited powers should be construed. See also the observations of this Court in R.M.D. Chamarbaugwalla v. Union of India, [1957] SCR 930, at p. 935 and 938. There section 2(d) of Prize Competitions Act, 1955 defined 'prize competition' as meaning any competition in which prizes are offered for the solution of any puzzle. As defined, the statute covered not only competition in which success depended on chance but also those which involved substantial degree of skill. It was conceded that the Act would be violative of Article 19(1)(g) of the Constitution if competitions which involved substantial degree of skill were included in the statutory definition. See the observa- tions of this Court at p. 935 of the report. This Court rejected the argument of the petitioners therein that since the language of the definition of prize competition was wide and unqualified, it was not open to the Court to read into it a limitation which was not there. This principle was reiterated and applied by this Court in the case of Kedar Nath Singh v. State of Bihar, [1962] Supp. (2) SCR 769. The question before this Court was about the validity of s. 124A of the Indian Penal Code. This Court in order to sustain the validity of the section on the touch-stone of Article 19(1)(a) of the Constitution of India, limited its applica- tion only to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. This Court held that it was well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpre- tation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.

Reference may also be made to the decision of this Court in R.L. Arora v. State of Uttar Pradesh, [1964] 6 SCR 784 where the question was about the Constitutionality of sec- tion 41(aa) of the Land Acquisition (Amendment) Act, 1962. This Court upheld the validity of the section following the principle of interpreting the said rule in a way which would be consistent with the Constitution. See the observations of this Court at p. 797 of the said report.

The technique of reading down has been adopted in numer- ous cases to sustain the validity of the provision. For example, in Jagdish Pandey v. The Chancellor, University of Bihar & Anr., [1968] 1 SCR 23 1, at pages 236-37, this Court made resort to section 4 of the Bihar State Universities Act, 1962. It was observed that section 4 so read literally it did appear to give uncanalised powers to the Chancellor to do what he liked on the recommendation of the Commission with respect to teachers covered by it. But this Court was of the opinion that the legislature did not intend to give such an arbitrary power to the Chancellor and was of the opinion that s. 4 should be read down and if it is read down, there was no reason to hold that the legislature was conferring a naked arbitrary power on the Chancellor and that power cannot be struck down ,as discriminatory under Article 14 of the Constitution. See the observations of this Court in Sunil Batra v. Delhi Administration & Ors., [1978] 4 SCC 494. There the constitutionality of s. 30, sub-section (2) and section 56 of the Prisons Act, 1894 was in question. Krishna Iyer, J, speaking for this Court at p. 511, para 34, of the report observed that the Court does not 'rush in' to demolish provisions where judicial endeavour, amelioratively interpretational, may achieve both constitutionality and compassionate resurrection. This salutary strategy, the learned Judge observed, of sustaining the validity of the law and softening its application was of lovely dexterity. The semantic technique of updating the living sense of a dated legislation is, in our view, perfectly legitimate. Semantic readjustments are necessary to obviate alegicidal sequel and a validation-oriented approach becomes the phi- losophy of statutory construction sometimes. Similar obser- vations were made in N.C. Dalwadi v. State of Gujarat, (supra). In Tinsukhia Electric Supply Co. Ltd. v. State of Assam & Ors., [1989] 3 SCC 709, this Court upheld the valid- ity of sections 9 and 10 of the Act by reading in several matters by necessary implication in order to sustain the validity of the sections. In Charan Lal Sahu & Ors. v. Union of India, [1989] Supp. SCALE 1, at pages 53 and 54, paras 101 as well as p. 61, para 114, it was observed that this principle of reading down has been adopted in U.S. Supreme Court in several cases. See also United States of America v. Edward A. Rumely, 97 Lawyers Edition 770 at 775. The princi- ple as enunciated in Rumely's case (supra) has been approved by this Court in Shah & Co. v. State of Maharashtra, [1967] 3 SCR 466 at 477-78. This principle of reading down or placing limited construction has been adopted by courts in England in deciding the validity of bye-laws and regula- tions. See Reg. v. Sadlers Co., 10 H.L.C. 404, at 460 and 463 and Faramus v. Film Artists Association, 1962 QB 527 at 542. The courts must iron out the creases, as said Lord Denning in Seaford Court Estates, [1949] 2 KB 481. This Court has also on numerous occasions followed this practice. See the observations of this Court in M. Pentiah and Ors. v. Veera Mallappa and Ors., [1961] 2 SCR 295; Bangalore Water Supply and Sewerage Board etc. v. A. Rajappa & Ors., [1978] 3 SCR 207. See also H.M. Seervai's 'Constitutional Law of India', 3rd Edn. Vol. I, pages 119-120. In the background of this, the learned Attorney General also drew our attention that the present regulation, as mentioned hereinbefore, should be read and construed in the said manner and the reasons and conditions of its exercise can be spelt out and it may be so construed. He submitted that it should be spelt out that the regulation requires reasons to be there, reasons which are germane and relevant. The principles of natural justice or holding of an enquiry is neither a universal principle of justice nor inflexible dogma. The principles of natural justice are not incapable of exclusion in a given situation. For example, Article 311(2) of the Constitution which essentially em- bodies the concept of natural justice, itself contemplates that there may be situations which warrant or permit the non-applicability of the principles underlying Article 311(2) of the Constitution. Reference may be made to the second proviso to Article 311 of the Constitution. This court has also recognised that the rule of audi alteram partera can be excluded where having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its application and even warrants its exclusion. If importing the right to be heard

has the effect of paral.Vsing the administrative process or the need for promptitude or the urgency of the situation so demands, natural justice could be avoided. See the observations of this Court in Maneka Gandhi's case at p. 681 of the report (supra). This Court in Tulsi Ram Patel's case (supra) had in terms ruled that not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. But the principles of natural justice must not be displaced save in exceptional cases. Consequent- ly, the learned Attorney General submitted that the words "where it is not reasonably practicable to hold an enquiry" may be imported into the regulations. It was submitted by the learned Attorney General that the exclusion of audi alteram partera rule in circumstances which are circum- scribed and coupled with the safeguard of recording of reasons which are germane and relevant, the termination in such a situation would not render the regulation unreasona- ble or arbitrary. Then it could not be said that the power was uncanalised or unguided if the regulation is construed and read down in the manner indicated above, according to the learned Attorney General. The reading down, the learned Attorney General conceded cannot, however, be done where there was no valid reason and where it would be contrary to proclaimed purpose. See the observations of this Court in Minerva Mills Ltd. & Ors. v. Union of India & Ors., [1981] 1 SCR 206, at p. 239 and 259.

On behalf of the workmen of the respondent DTC, Shri Ramamurthi, submitted that the Constitutional questions of great public importance arising in the present appeal, have to be examined in the light of the law laid down by the Full Court in the case of R.C. Cooper v. Union of India, [1970] 3 SCR 530 at 577 and by larger Constitution Benches in the cases of Maneka Gandhi v. Union of India (supra), Moti Ram Deka v. Union of India (supra), State of West Bengal v. Union of India, (supra) and the Constitution Bench decisions in the cases of Olga Tellis and Others v. Bombay Municipal Corporation and Others, (supra), Fertilizer Corporation Kamgar Union (Regd.) Sindri and Others v. Union of India and Others, [1981] 2 SCR at 60-61, Union of India v. Tulsiram Patel and Others (supra), Sukhdev Singh & Others v. Bhagat Ram Sardar Singh Raghuvanshi and Another (supra) and Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc., [1981] 2 SCR 79 at 100-102. According to Shri Ramamurthi these deci- sions are authority for the following propositions: (a) The declarations in the provisions contained in the Fundamental Rights Chapter involve an obligation imposed not merely upon the "State" but upon all persons to respect the rights declared, unless the context indicates otherwise, against every person or agency seeking to infringe them. See the observations of this Court in State of West Bengal v. Union of India, [1964] 1 SCR 371 at page 438: (b) Part III of the Constitution weaves a pattern of guarantee on the texture of basic human rights. The guaran- tees delimit the protection of those rights in their allot- ted field. They do not attempt to enunciate distinct right. [See R.C. Cooper's case (supra(at p. 577 of the report]. The extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor 2by the form of the action, but by its direct operation upon the individual's rights.

(c) Any person who is deprived of his right to live- lihood except according to just and fair procedure estab- lished by law can challenge the deprivation as offending the right to life, conferred by Article 21. See the observations of this Court in Olga Tellis's case (supra(at 80-81 and 85 of the report. Therefore, the holding to the contrary in A.V. Nachane & Anr. v. Union of India & Anr., [1982] 2 SCR 246 is no longer good law.

In any event Counsel is right that the observations made at p. 259 of the report (supra) were in a different context and the challenge based on Articles 19(1)(g) and 31 does not appear to have any substance in resolving the present controversy before us. Mr. Ramamurthi submitted that provision of any Rule that service shall be liable to termination on notice for the period prescribed therein

contravenes Article 14 of the Constitution as arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. See the observations of this Court in Moti Ram Deka's case (supra) at p. 770 and 751 of the re- port.

It was submitted that Articles 14, 19 and 21 of the Constitution are inter-related and the law must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and even if there is a law providing a procedure for depriving a person of personal liberty (this will equally apply to life) and there is, consequently, no infringement of fundamental right conferred by Article 21, such law in so far as it abridges or takes away any funda- mental right under Article 19 would have to meet the chal- lenge of the Article. See the observations of this Court in Maneka Gandhi's case (supra). Article 19(1)(g), it was urged, confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. See the observations in Fertilizer Corporation Kamgar Union's case (supra) at p. 60-61 of the report. According to Mr. Ramamurthi, there is a distinction between Public Employment or service and "pure master and servant cases". He referred to the observations of this Court in India Tobacco Co. Ltd. v. The Commercial Tax Offi- cer, Bhavanipore & Ors., [1975] 2 SCR 619 at 657; followed in A.L. Kalra v. The Project and Equipment Corporation of India Ltd., [1984] 3 SCR 646 at 664; Whenever, therefore, according to Shri Ramamurthi, there is arbitrariness in State Action whether it be of the Legislature or of the Executive or of an authority under Article 12, article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non/arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution. See the observations of this Court in Bandhua Mukti Morcha v. Union of India & Ors., [1984] 2 SCR 79 at 101. A violation of a principle of natu- ral justice by State action is a violation of Article 14 of the Constitution, which can be excluded only in exceptional circumstances. See the observations of this Court in Tulsi Ram Patel's case (supra) at 229, and at 233 of the report. It was, therefore, submitted that a clause authorising the ? employer to terminate the services of an employee whose contract of service is for an indefinite period or till the age of retirement, by serving notice violates the fundamen- tal rights guaranteed under Articles 14, 19(1) (g) and 21 of the Constitution for Article 21 is violated when right to livelihood is taken away by termination of service of a person; employed for an indefinite period or till the age of retirement except for proved misconduct. Assuming, it was argued, that in such a case right to livelihood can be taken away by termination of service by giving notice, nonetheless it could be validly done only, according to Shri Ramamurthi, if:

(i) There is a fair and just procedure by way of--(1) recording of reasons and (2) notice to show cause; (ii) And the right to terminate is restricted to exceptional grounds.

When the service of a person employed for an indefinite period or till the age of retirement is terminated, Shri Ramamurthi assets, then Article 14 is violated when there is no guidance for the exercise of power and reasons are not required to be recorded and principles of natural justice are abrogated. Similarly Article 19(1)(g) is violated, according to him, for the reasons that there is no guidance, no requirement of reasons to be recorded and there is viola- tion of the principles of natural justice.

Shri Ramamurthi reminded us that before India became independent in 1947, the Indian Contract Act 1872 was ap- plicable only to British India on its own force. By Merged State Laws Act, 1949 it was extended to the new provinces and merged States to the States of Manipur, Tripura by Vindhya Pradesh by Union territories Law Act 1950. It was also extended to the States merged in the States

of Bombay and Punjab by Bombay Act 4 of 1950 and Punjab Act 5 of 1950. With the promulgation of the Constitution, the Indian Con- tract Act 1872 extends to the whole of India except the State of Jammu & Kashmir. Shri Ramamurthi asserted the what- ever might have been the position in regard to the provinces comprised in British India before independence, as far as other areas, forming part of the Union of India under the Constitution are concerned, only the Indian Contract Act 1872 is applicable. By article 372 of the Constitution, this Act has been continued in operation even after the Constitu- tion came into force, subject to the other provisions of the Constitution.

A contract of service, according to Shri Ramamurthi is a species of contract and will, therefore, be governed by the provisions of the Indian Contract Act 1872. This Act has been held to be an Amending as well as a Consolidating Act. Therefore, there can be no question of common law of Eng- land, as made applicable in India during the British Rule, being the basis for deciding any question relating to con- tract of employment after 1950. In any event any provisions of either the Indian Contract Act, 1872, or of the English Common Law Applicable in British India before the Constitu- tion came into force would be void by reason of Article 13 of the Constitution if it infringed any of the fundamental rights contained in Part III of the Constitution, pleaded Mr. Ramamurthi before us. Under Section 2(h) of the Indian Contract Act, 1872 an agreement (including an agreement of service) becomes a contract only when it is enforceable by law. If it is not enforceable in law, it would be void by reason of section 2(g) of the Contract Act. The question for consideration would, therefore, be whether a clause in an agreement of service when it is for an indefinite period or till the age of retirement providing for termination by giving notice would be enforceable? It was submitted by the workers' union that it would not be enforceable if it vio- lates the fundamental rights guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution. See the observations of this Court in Moti Ram Deka's case (supra) at 709 of the Report. It was submitted that the broader submission was that under our Constitution there can be no contract of employment providing for termination of service by an em- ployer of an employee by giving notice, when the employment is for indefinite period or till the age of retirement. In any event, such a clause cannot find a place either in the contract of service or in the statutory provisions governing the conditions of service in the case of public employment under the 'state' as defined in Article 12 of the Constitu- tion.

Shri Ramamurthi urged that the observations contained in the judgment of this Court in Tulsiram Patel's case (supra) at 166 of the report, regarding the ordinary law of master and servant cannot be construed as laying down the proposi- tion that under the Indian law, even if a contract of serv- ice is for an indefinite period or till the age of retire- ment, it can still be terminated by giving reasonable period of notice. In any event, even in the Common Law of England, a distinction is made between public employment and "pure master and servant cases" [See the observations of this Court in Sukhdev Singh's case (supra) at page 657 of the report.

Mr. Ramamurthi submitted that the doctrine of pleasure advanced by the learned Solicitor General of India was confined to employment under the Union of India and States dealt with under Part XIV, Chapter I of the Constitution and cannot and do not extend to employment under local or other authorities referred to under Article 12 of the Constitu- tion. There cannot be any pleasure by such authority in respect of employment of the permanent employee. It was submitted by Shri Ramamurthi further that even in cases of employment under the Union and the States, the pleasure doctrine is limited by the express provisions of Article 311 of the Constitution. For that reason, according to him, it has lost some of its majesty and power. He referred us to the observations of this Court in Moti Ram Deka's case (supra) at p. 704 and Tulsi Ram Patels's case (supra) at page

In dealing with the question of validity of rules autho- rising the Government to terminate the services of temporary servants as upheld by this court in Champaklal Chimanlal Shah's case (supra) and Ram Gopal Chaturvedi's case (supra) it was submitted that it is important to note that the validity of the rules was challenged on the ground of denial of equality of opportunity in employment under the State guaranteed by Article 16 of the Constitution. In that con- text this Court observed at p. 20 1 (supra) of the report that there can also be no doubt, if such a class of tempo- rary servants could be recruited, there could be nothing discriminatory or violative of equal opportunity if the conditions of service of such servants are different from those of permanent employees. It is thus apparent that this Court, it was submitted, had no occasion to consider the reasonableness of a provision for termination of service on giving notice under Article 14 of the Constitution and, therefore, this decision can be of no assistance to the appellants. Shri Ramamurthi submitted that since, audi alteram partem is a requirement of Article 14, in view of recent decisions of this Court, and conferment of arbitrary power itself is contrary to Article 14, the rule in question can, according to Shri Ramamurthi, no larger be sustained as valid.

As far as the decision in Ram Gopal Chaturvedi's case (supra) was concerned, Shri Ramamurthi submitted that the reasons given for rejecting the argument that the rule confers an arbitrary and unguided power are not valid for in Moti Ram Deka' case (supra), where the view of two learned judges of this Court who had held similar power to be arbi- trary had not ever been noticed. The observation that it is impossible to define before hand all the circumstances in which the discretion can be exercised and the discretion had necessarily to be left to the Government, has not taken into consideration the circumstance that the denial of audi alteram parlem which is a require- ment of Article 14, can be only in exceptional circumstances and, therefore, such circumstances have necessarily to be spelt out. This Court had no occasion, according to Shri Ramamurthi, to consider the cumulative impact of the funda- mental rights guaranteed by Article 14, 19(1)(g) and 21 of the Constitution.

Shri Ramamurthi sought to urge before us that industrial law recognises the right of the employer to exercise, bona fide, the power to terminate the services of workman by giving notice, except in case of misconduct, which is unlike the law of master and servant. Shri Ramamurthi urged that it is important to note that in all cases under industrial law, decisions have been rendered by industrial tribunal when disputes had been raised by workmen challenging the action of the employer terminating their services by giving notice, under the terms of the contract of service or the Certified Standing Orders. The question was never raised, nor could it be raised, before the Tribunals that the very term in the contract of service or in Standing Orders would have to stand the test of Articles 14, 19(1)(g) and 21 of the Con- stitution. Further a constitution bench of this Court had rejected the contention that Industrial Tribunals should make a distinction between public sector and private sector industries. Reliance was placed on the observations of this Court in Hindustan Antibiotics Ltd. v. The Workmen & Ors., [1987] 1 SCR 652 at 669. On the consideration of the rele- vant material placed before us, we are asked to come to the conclusion that the same principles evolved by industrial adjudication in regard to private sector undertakings will govern those in the public sector undertakings having a distinct corporate existence. Therefore, all the decisions referred to by the appellant, it was argued, and interven- ers, were all concerned with applying the industrial law even though some Of them dealt with employees, working in statutory corporations or public sector undertakings. It was, therefore, submitted by Shri Ramamurthi that these decisions could afford no assistance to the Court, in decid- ing the issues raised in the present case, where the validi- ty of a

term of employment, permitting the employer to terminate the services of a permanent employee by simply giving notice, is challenged on the ground that such a term violates fundamental rights guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution. It was submitted fur- ther that the constitutional guarantees under Articles 14 and 21 of the Constitution are for all persons and there can be no basis for making a distinction between 'workmen' to whom the Industrial Disputes Act and other industrial laws apply and those who are outside their purview. The laws applicable to the former can only add to and not detract from the rights guaranteed by Part III of the Constitution.

It was important to note that all the decisions so far rendered by this Court striking down rules and regulations or a provision in the contract of service, authorising termination of service of permanent employees by giving notice relate to cases of non-workman and we were referred to the decisions in West Bengal State Electricity Board's case (supra), Central Inland Water Transport Corporation Ltd. 's case (supra) and O.P. Bhandari's case (supra). There is the theory that possibility of abuse of power is no ground for striking down the law. Attention may be drawn to the observations of this Court in The Collector of Customs, Madras v. Nathella Sampathu Chetty, [1962] 3 SCR 786 at 825 and Commissioner of Sales Tax, Madhya Pradesh v. Radhakri- shan & Ors. (supra). However, these decisions, it was sub- mitted on behalf of the respondents, would have no relevance for the present case because the power to terminate the services of a person employed to serve indefinitely or till the age of retirement can be exercised only in cases of proved misconduct or exceptional circumstances having regard to the Constitutional guarantee available under Articles 14, 19(1)(g) and 21 of the Constitution. Unless the exceptional circumstances are spelt out the power to terminate the services would cover both permissible and impermissible grounds rendering it wholly invalid, it was urged. This was particularly so because the requirement of audi alteram partem which is a part of the guarantee of Article 14 is sought to be excluded. There can be no guidance available in the body of the law itself because the purpose for which an undertaking is established and the provisions dealing with the same in the law can provide no guidance regarding excep- tional circumstances under which alone the power can be exercised. The question involved, Shri Ramamurthi empha- sised, in these cases is not the exercise of power which an employer possesses to terminate the services of his employee but the extent of that power.

Shri Ramamurthi drew our attention to the award and referred to paragraph 5.6 of the Shastri Award and other provisions of the award defining misconduct and also para- graph 522 of the Award dealing with the procedure for termi- nation of employment and 523 onwards. Mr. Ramamurthi further submitted that provisions of Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 cannot be rendered constitutional by reading the requirement of recording reasons and confin- ing it to cases where it is not reasonably practicable to hold an enquiry and reading it down further as being applicable to only exceptional cases would not be permissible construction and proper.

Shri Ramamurthi drew our attention to the true scope of Regulation 9(b) of the aforesaid Regulations in the light of the judgment of this Court in Balbir Saran Goel's case (supra). This rule, it has to be borne in mind, according to him, has been interpreted as applicable to all cases of termination including termination for misconduct as defined in the Standing Orders. In the aforesaid decision, at p. 761 of the report. this Court observed that:

"Regulation 9(b) clearly provides for termination of serv- ices in two modes: the first is where the services may be terminated without any notice or pay in lieu of notice. This can be done among other reasons for misconduct. The second mode is of terminating the services owning to reduction

of establishment or in circumstances other than those mentioned in clause (a) which relate to termination without notice. When termination is made under clause (b) one month's notice or pay in lieu thereof is to be given to the employee. Thus it is clear that if the employer chooses to terminate the services in accordance with clause (b) after giving one month's notice or pay in lieu thereof it cannot amount to termination of service for misconduct within the meaning of clause (a). It is only when some punishment is inflicted of the nature specified in Regulation 15 for misconduct that the procedure laid down therein for an enquiry etc. becomes applicable."

If this was the true scope of the Regulation, Shri Ramamurthi contended, then it was obvious that it leaves the choice entirely to the DTC Management either to proceed against the person for misconduct by holding an enquiry or for the same misconduct terminate his services by giving one month's notice. It is the conferment of such a power that has been held to be unguided and arbitrary in all decisions from Moti Ram Deka's case (supra) to the more recent deci- sions of this Court such as West Bengal Electricity Board's case (supra), etc. Therefore, it was submitted that the argument based on the assumption that Regulation 9(b) was confined to cases under than misconduct really overlooked the interpretation placed upon this Regulation by this Court.

Shri Ramamurthi further submitted that if regulation 9(b) confers this arbitrary power of leaving it to the DTC manage- ment to pick and choose then it is plain that there is nothing in the provisions of the Act or the regulations from which the DTC management can find any guidance. It was, therefore, the submission of the respondents that in order to conform to the Constitutional guarantees contained in Articles 14, 19(1)(g) and 21 of the Constitution as inter- preted by this Court, the first and foremost the regulation will have to make a distinction between cases where services are sought to be terminated for misconduct and cases of termination on grounds other than what would constitute misconduct. As far as termination or dismissal on ground of misconduct is concerned, ordinarily the detailed procedure for establishing misconduct had to be followed. In cases where it is not possible to follow the detailed procedure, then at least the minimum procedure of issuing a show cause notice should be followed after recording reasons why it is not practicable to hold a full-fledged enquiry. In cases where even this requirement of the elementary principles of natural justice is not to be followed, then the regulation must itself indicate those cases in which principles of natural justice can be totally abrogated after recording reasons.

As far as termination of service of a permanent employee on grounds which do not constitute misconduct is concerned, assuming that this is held to be permissible, it can be only in very exceptional cases and that too after observing at least the elementary principle of natural justice of asking for explanation before terminating the services and also recording reasons. Shri Ramamurthi urged that to read all this into the regulations would literally mean re-writing the regulations which is not permissible under any of the decisions or the law.

As one of the cases cover termination under The Punjab Civil Services Rules, 1952, Shri Ramamurthi drew our atten- tion to some of the provisions of these rules. He drew our attention to rule 3.12 which provides that unless in any case it be otherwise provided in those rules, a Government employee on substantive appointment to any permanent post acquired a lien on that post and ceased to hold any lien previously acquired on any other post. He also drew our attention to rule 3.15(a) which provided that except as provided in clause (b) and (c) of that rule and in note under rule 3.13, a Government employee's lien on a post may, in no circumstances, be terminated, even with his consent, if the result would be to leave him without a lien or a suspended lien upon a permanent post. Clause (b) of rule 3.15 provided that notwithstanding the provisions of rule 3.14(a),

the lien of a Government employee holding substantively a permanent post shall be terminated while on refused leave granted after the date of compulsory retirement under rule 6.21; or on his appoint- ment substantively to the post of Chief Engineer of the Public Works Department. And clause (c) of this rule provid- ed that a Government employee's lien on a permanent post, shall stand terminated on his acquiring a lien on a perma- nent post (whether under the Central Government or a State Government) outside the cadre on which he is borne. Note under rule 3.13 speaks about a Government employee holding substantially the post of a Chief Engineer of the Public Works Department, taking leave immediately on vacating his post he then shall during the leave be left without a lien on any permanent post. The expression 'vacate' used in the note refers only to vacation as a result of completion of tenure of attainment of superannuation.

Mr. R.K. Garg, appearing for the respondents in C.A. No. 4073 of 1986 stated that the Attorney General had rightly pointed out that employee's services were terminated under Para 522 of the Shastri Award merely because he had failed to mention a loan of Rs. 1.5 lakhs taken from another Branch of the Bank. Mr. Garg pointed out that the loan had been repaid. The failure to mention this loan had deprived the appellant of his livelihood. The use of this power claimed under Para 522 of the Shastri Award was not defended by the Attorney General in this case. We had fairly conceded that he might not support this termination when the case is heard on merits. But, that does not derogate from the wide ampli- tude of this uncontrolled, arbitrary power claimed by the management under Para 522 of the Shastri Award. Powers claimed under Para 522 must, therefore, be examined in the background of the facts and circumstances of this Appeal. It was submitted that this Court must hold that nothing in Para 522 of the Shastri Award confers on the management power so far as they can get rid of permanent employees of the Banks merely after service of notice on the imaginary belief that they were doing so for "efficient Management" of the Banks. Mr. Garg reminded us that it is common knowledge that all despots act as tyrants in the firm belief that the intolera- ble indignities and atrocities they inflict, were necessary in public interest and to save the Society. Mr. Garg submit- ted that the rule of law cannot be preserved if absolute, uncontrolled powers are tolerated and fundamental rights or Directive Principles are allowed to be reduced to a "dead letter".

Mr. Garg urged that the fundamental requirements of natural justice are not dispensible luxury. The express language of Para 522 of the Shastri Award is totally destructive of this require- ment.

The express language as mentioned hereinbefore of Para 522 of the Shastri Award provides:

"(1) In cases not involving disciplinary action for miscon- duct and subject to clause (6) below. The employment of a permanent employee may be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice. The services of a probationer may be terminated by one month's notice or on payment of a month's pay and allow- ances in lieu of notice."

Rule 148(3) reads:

"(3) Other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not, however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Arti- cle 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

"Note: The appointing authorities are empowered to reduce or waive, at their discretion, the stipulated period of notice to be given by an employee, but the reason justifying their action should be recorded."

Rule 348(4) reads:

"In lieu of the notice prescribed in this rule, it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice."

Rule 149(3) reads:

"Other railway servants: The services of other railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not howev- er, required in cases of dismissal or removal as a discipli- nary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity." It was urged by Mr. Garg that the services of a perma- nent bank employee cannot be terminated without charge of 'misconduct' and without an enquiry and the aforesaid para- graph gives no indication as to on what conditions this arbitrary uncontrolled power can be used to get rid of one or more permanent employees for "efficient management of Banks" on subjective opinions or suspicion not tested in enquiry into facts. It was further urged that this provision provides for "insecurity of tenure" for lakhs of permanent employees, Articles 14, 19(1)(g) and 21 of the Constitution and the integrated protection of these Fundamental Rights excludes the "doctrine of pleasure" and insists on security of tenure "during good behaviour". The right to livelihood cannot be rendered precarious or reduced to a glorious uncertainty", it was urged by Mr. Garg. Mr. Garg submitted that the right to "hire and fire" was the prerogative claimed by the employer in the days of uncontrolled "laissez faire." This was the "doctrine of pleasure of the Crown" in case of Government servants, who held office during the pleasure of the King who had absolute powers over his sub- jects. Articles 14, 19(1)(g) and 21 secure the rights of the citizen and act as limits on the powers of the "State" in Democratic Republic of India. Unjust, arbitrary, uncon- trolled power of "premature" termination of services of permanent employees should not be tolerated according to Mr. Garg by the Constitution of free India.

In case of Government servants, Articles 311(1) and 311(2) of the Constitution expressly restrict the "doctrine of pleasure" contained in Article 310. Article 14 also insists on natural justice as was provided in Article 311(2), in order to prevent arbitrary use of power of termi- nation. Articles 19(1)(g) and 21 read together require just, fair and reasonable procedure for termination of services for good cause. Without these safeguards, employees are reduced to the status of slaves of their masters. Employers are no longer masters as in the days of slavery of feudal relations, Mr. Garg tried to emphasise. He submitted that Article 14 of the Constitution did not permit permanent railway employees to be exposed to termination of their services on notice without charge of misconduct or a reason- able opportunity to answer the charge. Rules 148 and 149 of the Railway Establishment Code which have been set only hereinbefore have the same effect, as is the effect of para 522 of the Shastry Award, and both these Rules were declared unconstitutional in Moti Ram Deka's case (supra) by a seven Judges' Bench, according to Mr.-Garg.

Rules 148 and 149 were found violative of Article 14 for two reasons, it was submitted:

(i) Railway servants in the matter of termination of service could not form a separate Class from other Govern- ment servants (As per majority view, in the Judgment of Justice Gajendragadkar, in Moti Ram Deka '5 case [1964] 5 SCR 683,729-731).

(ii) Rule 148 conferred unguided, uncontrolled power of termination and, therefore, was hit by Article 14. (As per Justice Subba Rao and Justice Das Gupta, in Moti Ram Deka's case (supra).

Mr. Garg sought to urge that this binding decision of seven Judges' Bench in Moti Ram Deka's (supra) was applied in Gurdev Singh Sidhu v. State of Punjab & Anr., [1964] 7 SCR 587 at 592-593 by the Constitution Bench of five Judges to strike down a Service Rule which permitted compulsory retirement on completion of 10 years' services on the ground of 'inefficiency' etc. This Court held that Compulsory retirement could not be tolerated even after 10 years of service in view Of such retirement being not based on rele- vant considerations, including expected longivity of life of the employees in India. If the power of removal by way of compulsory retirement even after ten years was held uncon- stitutional in Gurdev Singh's case (supra) para 522 of the Shastri Award was far more arbitrary, unjust and unreasona- ble, it was urged before us.

It was reiterated before us that in view of the binding decision of seven Judges in Moti Ram Deka's Case and its application by five Judges in Case of compulsory retirement after 10 years in Gurdev Singh's Case (supra), it is not open to the employees to submit that similar powers claimed under paragraph 522 of the Shastri Award, even without 10 years' service for removal without charge of 'misconduct' and without enquiry, can be upheld as constitutional on any grounds whatsoever. It cannot be upheld as constitutional on any grounds whatsoever. It cannot be done without over- ruling Moti Ram Deka's case or without an express constitu- tional provision like second Proviso (a), (b) or (C) to Article 311(2), which was adopted.by the Constituent Assem- bly, not by a court of law, it was reiterated before us. It was submitted that no principle of interpretation permits reading down a provision so as to make it into a different provision altogether different from what was intended by the legislature or its delegate. (R. M.D.C. 's case (supra).

It was urged that it was established law that on reading down a provision, Court cannot preserve a power for a pur- pose which is just the opposite of what the legislature had intended. Para 522 of the Shastri Award was not at all intended to be used within limits expressed or implied. The Court must not legislate conditions such as were adopted by the Constituent Assembly in case of second Proviso to Arti- cle 311(2) in the Constitution of India. Even Parliament could not graft such limitations on Article 311(2), if second Proviso to Article 311 was not there in the Constitu- tion. This Court cannot and ought. it was submitted not to arrogate powers to legislate what was patently outside even the competence of Parliament of India.

It was submitted that in Tulsi Ram Patel's Case, the majority decision could not hold second Proviso to Article 311(2) unconstitutional. In order to give effect to the express language of second Proviso to Article 311(2), Court denied the protection of Article 14 to permit the President to terminate the services without following principles of natural justice' in cases covered by the said Proviso. In every other case, natural justice is the command of Article 311(2) of the Constitution was submitted.

The operation of Articles 14, 19(1)(g) and 311(2) of the Constitution does not permit Courts to lay down essential legislative policy, such as was laid down by the Constituent Assembly to over-ride 311(2) of the Constitution. Mr. Garg, therefore, submitted that the requirement of defining

'misconduct' in the Standing Orders and providing by meticulous provisions for a just, fair and reasonable enquiry into charges of 'misconduct' are the mandatory requirement of Industrial Employment Standing Orders Act. (U. P State Electricity Board v. Hari Shankar Jain, [1979] 1 SCR 355/362-3).

Shri Garg urged that the I.L.O. Conventions, accepted by India. required all employers to frame Standing Orders. He further urged that the demands of natural justice, which form part of Article 14 of the Constitution have been raised to the status of 'public policy' controlling section 23 of the Indian Contract Act. On that basis, clauses in contract of employment which provide for removal from serv- ice on the will of the employer have been condemned as 'The Henry VIII Clause' (see the observations of this Court in Central Inland Water Transports case (supra) against the ethos of the Constitution of Socialist Democratic Republic of India. In this connection, reference was made to the decision of this Court in Central Inland Water Transport's case (supra) and Maneka Gandhi's case (supra). In India, Shri Garg submitted. workers have a right to participate in the management. The participation in the management cannot exclude the 'power to be heard' and thus participate in a decision to remove a permanent employee. Government alone has power to refer to the industrial tribunal, Shri Garg submitted. He was against any reading down which is contrary to the principles of interpretation. He referred to the observations of the Privy Council in Nazir Ahmed's case [AIR 1936 PC 253]. He submitted that if two provisions exist, firstly, to remove from service after holding an enquiry on a charge of a 'misconduct'; and secondly without serving a charge-sheet or holding an enquiry all provisions for hold- ing enquiry will be rendered otiose and will be reduced to a mere redundancy. Such an interpretation will expose workers to harsher treatment than those guilty of misconduct, who will enjoy greater protection than those who have committed no misconduct. Such powers are patently discriminatory. Reference under section 10 of the Industrial Disputes Act would serve no purpose, submitted Mr. Garg. Court has a duty, according to him. to correct wrongs even if orders have been made which are later found to be violative of any fundamental right and to recall its orders to avoid injus- tice. He referred to the decision of this Court in A.R. Antulay v. R.S. Nayak and Anr., [1988] 2 SCC 602. He remind- ed us that no draft had been submitted by the Attorney General or the Solicitor General, which could be added as a proviso to para 522 of the Shastri Award by this Court as a piece of judicial legislation to amend the impugned para 522. Substantive provision of para 522 could not be con- trolled or curtailed effectively so that its operation could be confined within narrow constitutional limits. Mr. Garg reminded us that it is not the duty of the court to condone the constitutional delinquencies of those limited by the Constitution if they arrogate uncontrolled unconstitutional powers, which are neither necessary nor germane for supposed efficiency of services in the Banks as a business enter- prise. Mr. Garg submitted that in a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point means that decisions should be made by the application of known principles and rules and. in general, such decisions should be predictable and the citizen should know where he is. Law can only reach its finest moments when it has freed man from the unlimited discretion of ruler. He referred to the obser- vations of this Court in S.C. Jaisinhhani v. Union of India and Ors., [1967] 2 SCR 703 at p. 718-19.

On behalf of the Interveners in Civil Appeal No. 2876, Mr. P.P. Rao submitted that the aforesaid decision in Tulsi Ram Patel's case (supra) was an authority for the proposi- tion that but for clause (b) of the second proviso to Arti- cle 311(2) of the Constitution, the principles of natural justice could not have been excluded from the scope of Article 14 of the Constitution. It was urged by him that the said second proviso to Article 311(2) being itself a consti- tutional provision, such exclusion

was upheld by this Court in the said Tulsi Ram Patel's case (supra). page 237 and at last para to p. 242. Mr. Rao drew our attention to the well-settled rule of interpretation and submitted that where two interpretations are possible, one of which would pre- serve and gave the constitutionality of the particular statutory provision while the other would render it uncon- stitutional and void, the one which saves and preserves its constitutionality should be adopted and the other should be rejected. Fie, further, submitted that unless the provision of the Constitution itself excludes the principles of natu- ral justice, they continue to be applicable as an integral part of the right to equality guaranteed by the Constitu- tion.

It was further reiterated that as the employees of the DTC were not Government employees, Article 311(2) of the Constitution was not applicable. Consequently, the second proviso thereof was also not applicable, with the result that Article 14 of the Constitution fully applied to them and it included the principles of natural justice as held in Tulsi Ram Patel's (supra) itself at p. 233, last paragraph. Mr. Rao submitted that it is not permissible to read down statutory provisions when the avowed purpose is to confer power on an authority without any limitation whatever. That would be reading down contrary to the expressed or manifest intention of the legislature. He drew our attention to the observations of this Court in Minerva Mills Limited v. Union of India & Ors., [1981] 1 SCR 206 at 261. Therein, at p. 259 of the report, it was reiterated that the principles of reading down could not be distorted even when words of width are used inadvertently. In the instant case, Mr. Rao submit- ted, reading down would amount to distortion of the right to equality conferred by Article 14, which was regarded as a basic feature of the Constitution. Nothing short of an amendment of the Constitution could cut down the scope of the basic principle of equality, submitted Mr. Rao then referred to us Kesavananda Bharati v. State of Kerala, [1973] Supp. 1 S.C.R. 1 and submitted that any constitutional amendment which impairs the doctrine of equality would be liable to be declared unconstitutional on the ground of violation of the basic structure of the Constitution.

In the instant case, Mr. Rao submitted, regulation 9(b) deliberately conferred wide power of termination of service without giving a reasonable opportunity to an employee even if he is a regular or permanent employee, in addition to regulation 15 which provided for dismissal or removal after a disciplinary enquiry. Therefore, the intention of the regulation-making authority was clear and unambiguous. The provision is not capable of two interpretations. Consequent- ly, the question of reading down did not arise. Mr. Rao drew our attention to the observations of the Supreme Court of America in Elliott Ashton Welsh, II v. United States, 26 Lawyers' Edition 2nd, 308 at 327. Mr. Rao submitted that the decisions referred to by the learned Attorney General were not applicable to the instant case. He submitted that the decision of the Federal Court in Re The Hindu Women's Rights to Property Act's case (supra) involved the interpretation of a single word in the context of legislative competence. That was not the context of the present controversy, submit- ted Mr. Rao. Mr. Rao submitted that R.M.D. Chamarbaughwal- la's case (supra) was a case on severability. That was a case where the word 'competition' was interpreted. In the present case, the suggested reading down involves, according to Mr. Rao, not interpretation of any single word in regula- tion 9(b) but adding a whole clause to it which amounted to rewriting the provisions. Courts have refused to rewrite legislation to make up for the omissions of the legislature. Reliance was placed by Mr. Rao on Nalinakhya Bysack v. Shyam Sunder Halder & Ors., [1953] SCR 533, at p. 544-545. Mr Rao referred to the observations of this Court in Kedar Nath Singh v. State of Bihar, (supra) involving the interpreta- tion of section 124A IPC in the context of Article 19(1)(a) of the Constitution. The content of Article 19(1)(a) was not cut down. In the present case, the suggested reading down would inevitably drain out Article 14 of its vitality. Shri Rao drew our attention to the decision of this Court in R.L. Arora v. State of Uttar Pradesh, (supra) and submitted that the said

decision did not involve cutting down the scope of a fundamental right. He also drew our attention to the decision of this Court in Jagdish Pandey v. The Chancellor, University of Bihar (supra) which did not involve reading down so as to sacrifice the principle of natural justice which are considered an essential part of the rule of law. In Municipal Committee, Amritsar & Anr. v. State of Punjab & Ors., [1969] 3 SCR 447, this Court was concerned with the intention of the legislature and interpreted the Act con- sistent with the said intention. In the instant case. the intention was to confer power of termination of services of all categories of employees without any further enquiry. Sunil Batra v. Delhi Administration (supra) was again a decision where this Court found that the intention of the legislature was not to confer arbitrary power. In the in- stant case, the intention was different. N.C. Dalwadi v. State of Gujarat. (supra) was a case of giving reasonable interpretation to a provision which was capable of such an interpretation. In the scheme of DTC Regulations. regulation 9(b) was not susceptable to two interpretations. submitted Mr. Rao. According to Mr. Rao, the principle of reading down was not applicable where the intention of the law maker was to confer too wide a power intended to be exercised without giving an opportunity to the affected party to be heard. It was, therefore, submitted that the principle of reading down was not applicable and if applied would amount to cutting down the scope of Article 14 and subjecting permanent em- ployees of the DTC to a tremendous sense of insecurity which is against the philosophy and scheme of the Constitution. Mr Nayar, appearing in Civil Appeal No. 1115 of 1976--(Shri Samara Singh v. Zila Parishad Ferozepure) for the respondent, drew our attention to the fact that the appellant, Shri Satnam Singh was appointed by the respondent vide letter of appointment dated 9th March. 1961 the appel- lant ceased to work for the respondent, when his services were terminated simpliciter vide Resolution dated 26th November, 1965. He, therefore, had worked for the respondent only for a short period of less than four years. The serv- ices of the appellant ceased on the basis of the contract. the terms of which were mutually agreed between the parties. In case he had continued to work, he would have reached the age of superannuation in the year 1984. His total emoluments with effect from 1st November, 1964 to 30th September, 1984 would have been approximately Rs.2,46,464. Mr. Nayar filed a detailed statement and stated that the appellant ceased to work for the respondent with effect from 26th November, 1964 when he was discharged from service. In this case, it is necessary to bear in mind that the appellant, Shri Satnam Singh was appointed by the respond- ent, Zila Parishad, Ferozepure by letter of appointments dated 9th March. 1961. The Board approved his terms of appointment and the same were duly accepted by the appellant. The 'relevant clause of Contract between the parties for present purposes was clause 4 which was as follows:

"His services will be terminated on one month's notice on either side provided it will be open to pay him his salary for the period by which the notice falls short of one month. Similarly, if he wishes to resign he may do so by depositing with the District Board his salary for the period by which the notice given by him fails short of one month." The appellant, however, was continued to be governed by the Statutory Rules, known as District Board Rules, 1926. According to the respondent, the appellant did not cooperate inasmuch as he was not available in the Headquarters and presumably left without permission and without handing over important record and documents of the District Board, etc. But the appellant's version, as stated in the grounds of appeal, was entirely different. He urged that it was on account of vindictive attitude on the part of some of the employees of the respondent, which had produced his termina- tion order without enquiry. The District Board resolved that in terms of condition 4 of the terms of appointment, his services should be terminated on one month's notice or pay in lieu thereof.

Mr. Nayar submitted that rule 1(i) of District Board Rules, 1926, Part V also gave right to both the parties to terminate the contract of employment on one month's notice, etc. The said rule reads as

follows:

"In the absence of a written contract to the contrary every officer or servant employed by a District Board shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged during the period of probation or for misconduct or was engaged for a specified term and discharged at the end of it."

The services of the appellant were terminated vide Resolution dated 26th November, 1964 of the Board and he was discharged by allowing him one month's salary in lieu of notice. The termination order was dated 14th December, 1964. The appellant, Shri Satnam Singh filed a suit for declaration in the Court of Senior Sub-Judge, Ferozepure, challeng- ing the order of termination dated 14th December, 1964 as illegal, void, ultra vires, etc. The Senior Sub-Judge, Ferozepure, vide judgment and decree dated 9th January, 1969 held that the discharge of the appellant amounted to dismissal and as clearly no enquiry was held against him, the termina- tion simpliciter was bad in law. The respondent, Zila Pari- shad filed an appeal in the Court of 3rd Additional District Judge, Ferozepure, who vide order dated 22nd December, 1969 affirmed the decision of the trial Judge and dismissed the appeal of the respondent. The respondent filed regular appeal in the High Court of Punjab and Haryana at Chandi- garh, inter alia, pleading that the appellant was validly discharged in terms of his appointment order and rule 1(i), Part V-A of the District Board Rules, 1926.

The learned Single Judge of the High Court considered the matter in detail and referred to various judgments of this Court and held that it could not be said that the action of termination prima facie amounted to an order of dismissal even though the appellant was at the time a con- firmed employee of the respondent. The learned Single Judge found that the respondent had a contractual right to termi- nate the services of the appellant by giving a month's notice or a month's salary in lieu of notice. According to Shri Garg, the removal of the appellant from service was in accordance with the terms governing his appointment. Merely because on the 7th of November, 1964, the respondent re- solved to charge sheet the appellant for acts of omission and commission and ordered an enquiry, and such an enquiry never commenced, would certainly not be enough reason to hold that the termination of the appellant's services, was ordered by way of punishment and therefore, amounted to his dismissal, argued Mr. Nayar. It was submitted by Mr. Nayar that the appellant had conceded that condition no. 4 was legally good but he had argued that it was not meant to be effective after the appellant had been confirmed. Aggrieved by the order mentioned above, the appellant had filed Letters Patent Appeal before the Division Bench of the High Court. The Division Bench of the High Court by an order dated 13th September, 1972 referred the question of law for the decision of the full bench. The full bench of the High Court refrained the question of law as under: "Whether, the termination of services of a permanent Dis- trict Board Employee by giving him one month's notice or pay in lieu thereof in terms of the conditions of his appoint- ment and/or rule 1 in part V-A of the District Board Rules, 1926, is bad in law and cannot be made?

The majority of the learned Judges, inter alia, held that the appellant not being a government servant cannot have the protection of Article 311 of the Constitution as he was not a civil servant under the Central Government of the State Government. He was an employee of the District Board and his tenure of appointment was governed by the provisions of the District Board's Act, 1883 and the rules flamed thereunder as well as by the terms and conditions of his appointment. The condition no. 4 gave mutual right to the District Board as well as to the appellant to terminate the service by giving one month's notice or pay in lieu of notice, etc. The condition in the appointment letter shall not be deemed to have been abrogated by the Punjab Civil Services Rules. The Court held further

that the condition stated in the letter of appointment of the appellant contin- ued to bind the parties even after the appellant's confirma- tion and his services could be terminated by an order of discharge simpliciter in accordance with the condition no. 4 thereof as this condition was almost in the same terms as Rule I in Part V-A of the Rules. It was further held by the full bench of the High Court that the Punjab Civil Service Rules had no over-riding effect and these rules were to apply in respect of matters for which no provision had been made anywhere else because of the phrase used "so far as may be".

Rule 8.1 of the Business Rules reads as under: "In all matters relating to the conditions of service of its employees the Board shall so far as may be follow the rules from time to time in force for servants of the Punjab Gov- ernment."

The finding of the Letters Patent Bench in this regard was as under:

"According to Rule 8.1 ibid, the Punjab Civil Services Rules were to apply in respect of matters for which no provision had been made anywhere else because of the phrase used "so far as may be". Naturally, if a provision was made anywhere else, which went counter to the Punjab Civil Services Rules, the application of the latter rules It thus follows that the Punjab Civil Services Rules were not to apply to the appel- lant in respect of matters for which specific provision was made in his letter of appointment, which constituted the contract of service between him and the District Board, as he joined service on those terms.after accepting the same." The learned Chief Justice of Punjab & Haryana High Court, however, dissented. The answer to the question, therefore, was given in the negative vide order dated 3rd April, 1974. The Division Bench of the High Court which heard the matter after the question of law was answered by the Full Bench, dismissed the appeal of the appellant vide order dated 28th October, 1974 and this appeal to this Court arises from this order.

The appellant in Civil Appeal No. 1115/76, who appeared in person before us reiterated the relevant facts and urged that his removal was bad and the rule under which he was removed may be quashed. It may be mentioned that as regards letter of Shri Kuldip Singh Virk to the Senior Superintend- ent of Police, Ferozepure regarding the charges of corrup- tion against the appellant, a case under s. 5(2) of the Prevention of Corruption Act was registered. The appellant was tried for the said alleged offence and acquitted of the charges by the Special Judge Ferozepure. A further case was registered under ss. 381/ 409 of IPC against the appellant. Accordingly, the appellant was tried by the Judicial Magis- trate Ferozepure. The charge was framed by the Judicial Magistrate against the appellant. Against the aforesaid, the appellant filed a petition in the High Court and the charge and the proceedings in question were thereupon quashed by the High Court in July/August, 1967. There were three more cases tried by the Special Judge, Ferozepure and acquitted. The appellant filed a document in this Court claiming the monetary claim on the basis that his termination was wrongful. According to the appellant, he was entitled to recover Rs.4,83,061.90 paise. However. according to the statement filed by Shri Nayar, learned counsel for the respondents in this case, the appellant was entitled to withdraw from the District Board Rs.2,46,464.46 paise, in case he would have been in service before his date of super- annuation, i.e., 30th September, 1984. There is no evidence from either side as to whether the appellant had worked somewhere else though the appellant did not work with the respondent because of his suspension. The appellant had, however, stated that he did not so work. In that view of the matter, if the contentions or' the appellant are accepted that the clause under which the terms of employment of the appellant was agreed and under which the termination was effected without any enquiry and further in view of the fact that the learned trial Judge before whom the appellant had filed the suit first and decreed the suit declaring the appellant

to be entitled to be in service, the appellant, in our opinion. should rightly be granted a monetary claim for Rs.4,83,061.90 paise and further interest at 6% from 30th September, 1984. This would be in consonance with justice and equity in the facts and the circumstances of this case. This order, however, will have to be passed if we accept the contention on behalf of the appellant herein on the con- struction of the clause.

In the matter of M/s Indian Airlines, which is the subject-matter of the Application for Intervention No. 1 of 1990:in Civil Appeal No. 2846 of 1986, Mr. Lalit Bhasin, on behalf of the interveners contended that there has been distinction between the discharge simpliciter and dismissal from service by way of punishment. According to Mr. Bhasin the effect of the judgments of this Court in the Central Inland Water's case (supra) and West Bengal's (supra) was to take away the right of the employer to terminate the serv- ices of an employee by way of discharge simpliciter. Accord- ing to Mr. Bhasin, this Court had recognised the existence of the inherent right of an employer to terminate the serv- ices of an employee in terms of the contract of employment and also under the various labour enactments. Attention of this Court was invited to the provisions of the Industrial Employment (Standing Orders) Act, 1946, which applies to all industrial establishments whether in the public or private sector. Under and as a part of the said Act, model standing' orders are set out and Standing Order No. 13 provides for simple termination of employment by giving one month's notice etc. Similarly, there are provi- sions under various Shops and Establishments Acts of differ- ent States providing for termination of employment of perma- nent employee after giving one month's notice or pay in lieu of notice. Attention of this Court was invited to s. 30 of Delhi Shops and Establishments Act.

The Industrial Disputes Act itself makes distinction between discharge and dismissal and attention of this Court was invited to s. 2(00) of the Industrial Disputes Act, which defines 'retrenchment'. This section expressly ex- cludes termination of services as a result of nonrenewal of contract of employment. Section 2(s) of the Industrial Disputes Act defines 'workman' to include any person who has been dismissed, discharged or retrenched. Section 2A distin- guishes discharge, dismissal and retrenchment. It is pertinent to point out that the Original Regula- tion 13 of Indian Airlines Employees Service Regulations was set out as under:

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

Provided however, the Corporation will be at liberty to refuse to accept the termination of his service by an em- ployee where such termination is sought in order to avoid disciplinary action contemplated or taken by the Management."

After the decisions of this Court in Central Inland Water's case (supra), Indian Airlines initiated steps to amend its Regulation 13 and bring it in line with Article 311(2) of the Constitution as directed by this Court in Hindustan Steels Lid' case (supra). It appears that the Board of Directors of Indian Airlines had accordingly ap- proved of the amendments to Regulation 13 and the amended Regulation reads as under:

"(a) The services of an employee may be terminated without assigning any reasons to him/her and without any prior notice but only on the following grounds not amounting to misconduct under the Standing Orders, namely: (i) If he/she is, in the opinion of the Corporation (the Board of Directors of Indian Airlines) incompetent and unsuitable for continued employment with the Corporation and such incompetence and unsuitability is such as to make his/her continuance in employment

detrimental to the inter- est of the Corporation;

OR

If his/her continuance in employment constitutes, in the opinion of the Corporation (the Board of Directors of Indian Airlines), a grave security risk making his/her continuance in a service detrimental to the interests of the Corporat ion;

OR

if in the opinion of the Corporation (the Board of Directors of Indian Airlines) there is such a justifiable lack of confidence which, having regard to the nature of duties performed, would make it necessary in the interest of the Corporation, to immediately terminate his/her services.

(b) The employee can seek termination of his/her employment by giving 30 days notice or basic pay in lieu: Provided however the Corporation will be at liberty to refuse to accept the termination of his/her service by an employee where such termination is sought in order to avoid disciplinary action contemplated or taken by the Management."

According to Mr. Bhasin, in the amended Regulation 13, Indian Airlines had taken care to set out the circumstances in which the services of an employee can be terminated by way of discharge and without holding enquiry. Mr Bhasin urged that these are eventualities which do not constitute misconduct and yet retention of an employee in the service by the management for any one of the grounds mentioned in the aforesaid Regulation might be considered as detrimental for the management or against public interest. Mr. Bhasin submitted that the power has been vested with the Board of Directors and not with any individual. According to Mr. Bhasin, plain reading of Regulation 13, as amended, would clearly establish that the vice. if any, or arbitrariness is completely removed and sufficient guidelines are made avail- able to the highest functionary, namely, the Board of Direc- tors to exercise the restricted and limited power now avail- able to the employer under these Regulations. Similar submissions have been made on behalf of Air India, who are interveners. Submissions made hereinbefore were alternative submissions. The original Regulation 48 of Air India Employees Service Regulations was as follows: "Termination .'

The services of an employee may be terminated without as- signing any reason, as under:

(a) of a permanent employee by giving him 30 day's notice in writing or pay in lieu of notice;

(b) of any employee on probation by giving him 7 days' notice in writing or pay in lieu of notice:

(c) of a temporary employee by giving him 24 hours' notice in writing or pay in lieu of notice.

Explanation.' For the purposes of the regulation, the word "pay" shall include all emoluments which would be admissible if he were on Privilege leave."

After the decisions of this Court declaring the afore- said Regulation as void in Civil Appeal No. 19 of 1982 in the Case of Manohar P. Kharkar & Anr. v. Kaghu Raj & Anr., Air India amended the aforesaid Regulation, which now reads as under:

"(a) The services of a permanent employee may be terminated without assigning any reasons to him/her and without any prior notice but only to the following grounds not amounting to misconduct under Service Regulation 42, namely: (i) if he/she is, in the opinion of the Corporation (the Board of Directors of Air India) incompetent and unsuitable for continued employment with the Corporation and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interests of the Corporation;

OR

If his/her continuance in employment constitutes, in the opinion of the Corporation (the Board of Directors of Air India), a/grave security risk making his/her continuance in service detrimental) to the interests of the Corporation;
OR

If, in the opinion of the Corporation (the Board of Direc- tors of Air India), there is such a justifiable lack of confidence which, having regard to the nature of duties performed, would make it necessary, in the interest of the Corporation, to immediately terminate his/her services. (b) The services of an employee on probation may be termi- nated without assigning any reason to him/her but on giving 30 days notice in writing or pay in lieu thereof. (c) The services of a temporary employee may be terminated without assigning any reason to him/her but on giving 15 days notice in writing or pay in lieu thereof.Explanation For the purpose of this Regulation the word "pay" shall include all emoluments which would be admissible if he were on privilege leave."

The question regarding justification of the action taken by the management was touched by this Court, but since the action was based on the old Regulation 48, it had to be quashed. It was submitted on behalf of the Air India that care had been taken to suit the circumstances in which the services of an employee could be terminated by way of dis- charge simpliciter and without holding enquiry. These are eventualities which do not constitute misconduct and yet retention of an employee in the service of the management for any one of the grounds mentioned in the said Regulation might be considered as detrimental for the management or against public interest. It was submitted that the said regulation 48 has to be read with Regulation 44(A) which reads as under:

"44(A)(i) Notwithstanding anything contained in these Regu- lations and if, in the opinion of the Corporation (the Board of Directors of Air India), it is not possible or practica- ble to hold an enquiry under the relevant provisions of these Regulations, the Corporation may, if satisfied that the employee has been guilty of any misconduct, any one of the punishment mentioned in Regulation 43 on the employee concerned.

Provided that before exercising his extra ordinary power, the Board shall give 30 days prior notice to the employee concerned of the act of misconduct that the reasons why it is not possible or practicable to hold an enquiry into such misconduct, and the punishment proposed by the Board and the employee shall be entitled to make a full written represen- tation to the Board in response to such notice. (ii) No action shall be taken under the Regulation until the Board has taken into consideration the representation made by the concerned employee under the proviso to Section (i) within the notice period."

The original regulation 44 was also modified. According to the interveners, the cumulative reading of regulation 48, as amended, and regulation 44, as amended, would clearly establish that the vice,

if any, of arbitrariness is com- pletely removed and sufficient guidelines are made available to the Board of Directors to exercise the restricted and limited power now available to the employer under these Regulations.

In C.M.P. No. 30309 of 1988, on behalf of the New India Assurance Co., the intervention application was filed. It was stated that in the courts below the writ petition No. 835 of 1975 was filed by the employee challenging his termi- nation and the appeal filed thereon were decided on grounds available to the petitioner at that time. A special leave petition was filed by the employee concerned which has now become C.A. No. 655 of 1984. After the judgment in the Central Inland Water's case (supra), an additional ground is now being taken to contend that a contract entered into way back in the sixties when the employee concerned was an employee of the Orissa Cooperative Insurance Society Ltd., Cuttack could not be enforced now and the same ought to be declared void in view of the Central Inland Water's case (supra).

The intervention was allowed on 24th January, 1990 and Smt. Shyamla Pappu, Senior Advocate submitted written sub- missions. It was submitted that adjudication on the merits and the consideration of the facts and circumstances of the case may be left to the Bench hearing the matter after the decision of the question of law referred to the Constitution Bench.

In this connection, it may, however, be noted that the General Insurance was nationaIised under the provisions of the General Insurance Provisions (Nationalisation) Act, 1972 and the said Act came into force on 20th September, 1972. Prior to this, General Insurance (Emergency Provisions) Act, 1971 was passed under the provisions of which Act all under- takings of all Insurers vested in the Central Government with effect from I3th May, 1971. This was pending nationali- sation which took place in 1972 as aforesaid. Section 7(1) of the said Act which provided for the takeover of former employees reads as under:

"Every whole-time officer or other employee of an existing Insurer other than an Indian Insurance Company, who was employed by that insurer, wholly or mainly with his general insurance business immediately before the appointed day, shall, on the appointed day, become an officer or other employee, as the case may be, of the Insurance Company, in which the Undertaking to which the service of the officer or other employee relates has vested and shall hold his office or service on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so until his employment in the Indian Insurance Company in which the undertaking or part has vested, is terminated or until his remuneration, terms and conditions are duly altered by that Indian Insur- ance Company."

The original terms and conditions had not been altered and the employees like the appellant in C.A. No. 855/84 continued to be governed by the original terms and condi- tions of the contract at the time of termination. The origi- nal terms and conditions of employment, therefore, continued in force. The contract of service was entered into when the appellant joined the Orissa Cooperative Insurance Society Ltd. way back in 196 1 and at the time of take-over by the Central Government was the Divisional Manager of the said society. After the take over by the Central Government of general insurance in 1972, a great deal of reorganisation had to be effected in order to tone up the system of general insurance which had become unwieldy due to the mushroom growth of societies with no control whatsoever when insur- ance was in private hands.

It was submitted by Smt. Shyamla Pappu that there are many such cases where action was taken soon after nationali- sation of general insurance in 1972. If such orders are set aside today, Smt. Shyamla Pappu posed the question, what would be the result? Would the order set aside, at this stage give the employee a right to be reinstated'? If the answer to the above is in the affirmative, would it be conducive to efficiency in the conduct of a public utility such as general insurance, Smt. Pappu raised the question. Would it not hamper the Company's business considering that the reduction/reorganisation of staff was essential for the effective functioning of the public service? Smt. Pappu asked the question would the public service not be saddled with unnecessary and/or incompetent staff, thus, burdening the public utility/service with unmanageable costs and staff that is ineffective'? It was urged that the New India Assur- ance Company had a clause, in the contract at the relevant time, which was as follows:

"in the event of the society not having any further need of any employees services, whether permanent or temporary, which shall be decided by the board, the Principal Officer shall give 30 days notice in writing for termination of his services or in lieu thereof pay such employee a sum equiva- lent to one month pay including allowance upto the period of notice."

The above clause covered cases of retrenchment, aboli- tion of posts and other situations which had been adjudicat- ed upon by this Court. If, however, the Central Inland Water's case (supra) is applied, Smt. Shyamla Pappu submit- ted, then the management of the Intervene r Company will be powerless even in a case of abolition of posts or retrench- ment or any other allied situation. It is seen that the power to terminate an employee is co-existent with the power to appoint. Smt. Shyamla Pappu relied on the General Clauses Act and submitted that the Central Inland Water's case (supra) was erroneous in so far as it made a complete nega- tion of this power. Then, it was submitted by her that in case of an employer who had made all the necessary investi- gation and the employee concerned has been fully heard before the order 01' termination and if the decision of Central Inland Water's case was applied, then even such a case would be a case of illegal termination, considering that there would be no power to terminate. It was submitted that the Central Inland Water's case had to be read down because paras 77, 92 and 93 of the report take in even private employment. The sweep of the judgment cannot hold good and had to be curtailed.

According to Smt. Pappu, what then was the position of terminations effected when the law was different? It cannot be said that they are entitled to relief now. It should be clarified that the judgment of this Court would apply pro- spectively, it was submitted. Past cases might be treated as concluded in view of the law prevailing at that time and also in view of the contentions urged by the parties in the courts below at various stages. In the event, this Court comes to the conclusion that even old cases would be covered by the judgment now rendered, the orders already passed may be upheld and a post-decisional hearing might be directed so that the management concerned has the opportunity of showing that there existed good reasons for termination though the same were not communicated to the employee concerned because the law then existing did not require such a communication. In the interest of justice, we should allow such a course. In the light of the provisions and in the facts and the circumstances of the case, it is, therefore, necessary to consider the validity of the power of termination of employ- ment by the employers or authorities of the employees with- out holding any enquiry in the circumstances noted in the several civil appeals and applications herein.

In these civil appeals. the question of actual user of power is not the main issue. but the validity of clauses or regulations containing the aforesaid power. The instances of actual user of power,

however, are not wholly irrelevant on the question of the validity or extent of the power because these explain the extent and content of power and/or occa- sion for such user. Firstly. we have to. in view of the facts and the circumstances of the Civil Appeal No. 2876 of 1986, consider the amplitude of the power under clause (b) of Regulation 9 of the Regulations concerned. We have noted the contents of that Regulation. We have also noted the amplitude of the expression of that power as was canvassed before the High Court in the matter under appeal and as noticed by the decision of this Court in Delhi Transport Undertaking v. Balbir Saran Goel's case (supra). A survey of the several authorities of law and the development of law from time to time would lead one to the conclusion that the philosophy of the Indian Constitution, as it has evolved, from precedent to precedent. has broaden the horizons of the right of the employees and they have been assured security of tenures and ensured protection against arbitrariness and discrimination in discharge or termination of his employ- ment. This is the basic concept of the evolution from the different angles of law of master and servant or in the evolution of employer and employee relationship. It is true that. the law has travelled in different channels, govern- ment servants or servants or employees having status have to be differentiated from those whose relationships are guided by contractual obligations.

But it has to be borne in mind that we are concerned in these matters with the employees either of semi-Government or statutory corporations or public undertakings who enjoy the rights. privileges. limitations and inhibitions of institutions who come within the ambit of Article 12 of the Constitution. It is in the background of these parameters that we must consider the question essentially and basically posed in these matters. The basic and the fundamental ques- tion to be judged is. in what manner and to what extent, the employees of these bodies or corporations or institutions could be affected in their security of tenure by the employ- ers consistent with the rights evolved over the years and rights emanating from the philosophy of the Constitution as at present understood and accepted.

We have noted the exhaustive and the learned analysis of the background of the diverse facts projected in the several cases and appeals before us.

Efficiency of the administration of these undertakings is very relevant consideration. Production must continue, services must be maintained and run. Efficacy of the serv- ices can be manned by the disciplined employees or workers. Discipline, decency and order will have to be maintained. Employees should have sense of participation and involvement and necessarily sense of security in semi-permanent or quasi-permanent or permanent employment. There must be scope for encouragement for good work. In what manner and in what measure. this should be planned and ensured within the framework of the Constitution and, power mingled with obli- gations, and duties enjoined with rights, are matters of constitutional adjustment at any particular evolved stage of the philosophy of our Constitution.

We have noted several decisions, numerous as these are, and the diverse facts, as we have found. We have noted that in some cases arbitrary action or whimsical action or dis- criminatory action can flow or follow by the preponderance of these powers. The fact that the power so entrusted with a high ranking authority or body is not always a safe or sound insurance against misuse. At least, it does not always ensure against erosion of credibility in the exercise of the power in particular contingency. Yet, discipline has to be maintained, efficiency of the institution has to be ensured. It has to be recognised that quick actions are very often necessary in running of an institution or public service or public utility and public concern. It is not always possible to have enquiry because

disclosure is difficult; evidence is hesitant and difficult, often impossible. In those circum- stances, what should be the approach to the location of power and what should be the content and extent of power, possession and exercise of which is essential for efficient running of the industries or services'? It has to be a matter both of balancing and adjustment on which one can wager the salvation of rights and liberties of the employees concerned and the future of the industries or the services involved.

Bearing in mind the aforesaid principles and objects, it appears to us that the power to terminate the employment of permanent employment must be there. Efficiency and expedien- cy and the necessity of running an industry or service make it imperative to have these powers. Power must, therefore,. with authorities to take decision quickly, objectively and independently. Power must be assumed with certain conditions of duty. The preamble, the policy, purpose of the enacting provision delimit the occasions or the contingencies for the need for the exercise of the power and these should limit the occasions of exercise of such powers. The manner in which such exer- cise of power should be made should ensure fairness, avoid arbitrariness and mala fide and create credibility in the decisions arrived at or by exercise of the power. All these are essential to ensure that power is fairly exercised and there is fair play in action. Reasons, good and sound, must control the exercise of power.

We have noted the rival submissions. Learned Attorney General of India and the learned Solicitor General and others appearing those who sought for sustaining the power by the employers or the authorities, contend that for effi- ciency of the industry, for the attainment of the very purpose for which institutions are created, there should be power to terminate the employment- of undesirable, ineffi- cient, corrupt, indolent, disobedient employees in those cases where holding of enquiry or prolonging these employees for that purpose would be detrimental, difficult and frus- trating. It is in this context that we should examine the power under the aforesaid Regulation 9(b). The power must be there, the power must be utilised by person or authority, high ranking enough or senior enough who can be trusted or who can be presumed to be able to act fairly, objectively and independently. The occasion for the exercise of the power must be delimited with precision, clarity or objectiv- ity. And those occasions must be correlated to the purpose for which the powers are sought to be exercised. In concrete terms, for the running of the industry or the service, efficiently, quickly and in a better manner or to avoid deadlocks or inefficiency or friction, the vesting of the power in circumstances must be such that will evoke credita- bility and confidence. Reasons must be there, reasons must be perspectable, reasons must be relevant and the reasons must be of authority independently, fairly and objectively arrived at.

Notice of hearing may or may not be given, opportunity in the form of an enquiry may or not be given, yet arbi- trariness and discrimination and acting whimsically must be avoided. These power must, therefore, be so read that the powers can be exercised on reasons, reasons should be re- corded, reasons need not always be communicated, must be by authorities who are competent and are expected to act fair- ly, objectively and independently. The occasion for the use of power must be clearly circumscribed in the above limits. These must also circumscribe that the need for exercise of those power without holding a detailed or prolonged enquiry is there.

As we have noted, a good deal of controversy was that these inhibitions or limitations or conditions are not there in the amplitude or the extent of the power enumerated or stated in Regulation 9(b) of the aforesaid Regulations concerned or of similar provisions that we have examined in these cases.

We have noted the argument, learned and interesting, on the question of judicial law making

imputing to the legisla- tures what these have not articulated. Should the courts say or can say what the legislatures have not said'? We have noted the controversy of how should legislation of limited legislatures, Parliaments or rule making bodies, who are not expected or enjoined to make rules or laws contrary to or in derogation or the constitutional prohibitions and inhibi- tions be read. We have been tempted to read down in the path of judicial law making on the plea that legislature could not have intended to give powers to the authorities or employers which would be violative of fundamental rights of the persons involved in the exercise of those powers and, therefore, should be attributed those powers on conditions which will only make these legal or valid. Our law making bodies are not law into themselves and cannot create or make all laws. They can only confer powers or make laws for the conferment of powers on authorities which are legal and valid. Such powers conferred must conform to the consitu- tional inhibitions. The question, therefore, is--is it possible or desirable to read down the power conferred under Regulation 9(b) or similar regulations permitting employer or the authority to terminate the employment of the employ- ees by giving reasonable notice or pay in lieu of notice without holding enquiry with the conditions indicated or mentioned hereinbefore? Will it or will it not amount to making laws of stating which the legislature or the law making body has not stated?

We have been reminded that judges should not make laws. But the question is--can the judges articulate what is inarticulate and what can be reasonably and plainly found to be inherent on the presumption that a legislature or a law making body with the limited authority would act only within limitations so as to make the legislation or law valid and the legislature must be presumed to act with certain amount of knowledge and fairness protecting the rights of people concerned and aiming at fairness in action?

We have noted the rival contentions. We have noted the submission that Mr. Garg, Mr. Ramamurthi and others invited us not to read down and against legislating positively with conditions. But the question is--are those conditions which we are invited to attribute to the legislature or the law making bodies contrary to or against the manifest intention of the legislature? Legislation, both statutory and constitutional, is enacted, it is true, from experience of evils. But its general language should not, therefore, necessarily be confined to the form that evil had taken. Time works changes, brings into existence new conditions and purposes and new awareness of limitations. Therefore, a principle to be valid must be capable of wider application than the mischief which gave it birth. This is particularly true of the constitutional constructions. Constitutions are not ephemeral enactments designed to meet passing occasions. These are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human insti- tutions can approach it ..... ". In the application of a Constitutional limitation or inhibition, our interpretation cannot be only of 'what has been' but of 'what may be'. See the observations of this Court in Sunil Batra v. Delhi Administration (supra). Where, therefore, in the interpreta- tion of the provisions of an Act, two constructions are possible, one which leads towards constitutionality of the legislation would be preferred to that which has the effect of destroying it. If we do not read the conferment of the power in the manner we have envisaged before, the power is liable to be struck down as bad. This, we say in spite of the argument by many including learned Solicitor General of India and Smt. Shyamla Pappu that in contractual obligations while institutions or organisations or authorities, who come within the arebit of Article 12 of the Constitution are free to contract on the basis of 'hire and fire' and the theory of the concept of unequal bargain and the power conferred subject to constitutional limitations would not be applica- ble. We are not impressed and not agreeable to accept that proposition at this stage of the evolution of the constitu- tional philosophy of master and servant framework or if you would like to call it employer or employee relationship. Therefore, these conferments of the powers on the

employer must be judged on the constitutional peg and so judged without the limitations indicated aforesaid, the power is liable to be considered as arbitrary and struck down. Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to ,foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language, and for that matter any language in use today, is not an instrument of mathematical precision. It has been said that our literature would have been much the poorer if it were.Leaving, however. the question of richness or poverty of our literature apart, we must proceed on the assumption that human mind cannot foresee everything. It has, therefore, been said that when a question arises whether the power has been properly conferred and even if so, the extent of it. Lord Denning has opined that a Judge in such a situation cannot simply fold his hand and blame the draftsmen and look for new enactment. Lord Denning invites us to set to work on the construction task of finding the intention of the Parliament or the law making body and we must. however. do this not only from the language of the statute. because. as we have seen. language is an imperfect medium and very often thoughts are perpetu- ally in search of 'broken language'. But the judge must also do it from a consideration of the social conditions which give rise to it, and o[the mischief which it was intended to remedy and also in the light of the constitutional inhi- bitions and then supplant the written words and add to it end give 'force and life' to the intention and purpose of the legislature or the law making authority. A judge must not alter the material of which a law or an instrument is woven, but he can and should iron out the creases and if one may venture to say, make articulate the inarticulate premise but make articulate only which follow from necessary compul- sions of the situations and the constitutional position. See in this connection the observations of Lord Denning in "The Discipline of Law" at p. 12.

It is true that judicial jealously of legislature in law making has long been outdrawn, but the strict construction remains still an established rule. It is generally accepted principle that judges in interpreting statutes, should give effect to the legislators' intent. By doing so. the courts do recognise their subordinate position and their obligation to help the legislature to achieve its purpose. But in that effort. creativity is essential. There have been differences of opinion on the practices that the courts may employ in attempting to discover the legislative intent. In the begin- ning, conventional practice was only to look to the words of the statutes. Now the entire spectrum has to be examined. It has been said that judges are not unfettered glossators. is true that there is no actual expression used ena- bling the legislation or the statute in question indicating the limitations or conditions as aforesaid. But it must proceed on the premise that the law making authority intend- ed to make a valid law to confer power validly or which will be valid. The freedom, therefore, to search the spirit of the enactment or what is intended to obtain or to find the intention of the Parliament gives the Court the power to supplant and supplement the expressions used to say what was left unsaid. This is a power which is an important branch of judicial power, the concession of which if taken to the extreme is dangerous, but denial of that power would be ruinous and this is not contrary to the expressed intention of the legislature or the implied pur- pose of the legislation. It was not as Shri Ramamurthi tried to argue that legislature wanted to give an uncontrolled and absolute power to discharge employees on the part of the employers without any enquiry in all circumstances. That cannot be and that was not intended to be as can be implied from all the circumstances.

In the aforesaid view of the matter, I would sustain the constitutionality of this conferment of power by reading that the power must be exercised on reasons relevant for the efficient running of the services or performing of the job by the societies or the bodies. It should be done objective- ly, the reasons should be recorded, it should record this and the basis that it is not feasible or possible reasonably to hold any enquiry without disclosing the evidence which in the circumstances of the

case would be hampering the running of the institution. The reasons should be recorded, it need not be communicated and only for the purpose of the running of the institution, there should be factors which hamper the running of the institution without the termination of the employment of the employee concerned at that particular time either because he is a surplus, inefficient, disobedient and dangerous.

Construction or interpretation of legislative or rule provisions proceeds on the assumption that courts must seek to discover and translate the intention of the legislature or the rule-making body. This is one of the legal fictions upon the hypothesis of which the framework of adjudication of the intention of a piece of legislation or rule proceeds. But these are fictional myths to a large extent as experi- ence should tell us. In most of the cases legislature, that is to say, vast majority of the people who are supposed to represent the views and opinions of the people, do not have any intention, even if they have, they cannot and do not articulate those intentions. On most of these issues their is no comprehension or understanding. Reality would reveal that it is only those who are able to exert their view- points, in a common parliamentary jargon, the power lobby, gets what it wants, and the machinery is of a bureaucratic set up who draft the legislation or rule or law. So, there- fore, what is passed on very often as the will of the people in a particular enactment is the handy work of a bureaucrat- ic machine produced at the behest of a power lobby control- ling the corridors of power in a particular situation. This takes the mythetical shape of the 'intention of the people' in the form of legis- lation. Again, very often, the bureaucratic machine is not able to correctly and properly transmute what was intended to be conveyed. In such a situation, is it or is it not better, one would ponder to ask, whether the courts should attribute to the law-making body the knowledge of the values and limitations of the Constitution, and knowledge of the evils that should be remedied at a particular time and in a situation that should be met by a particular piece of legis- lation, and the court with the experience and knowledge of law, with the assistance of lawyers trained in this behalf, should endeavour to find out what will be the correct and appropriate solution, and construe the rule of the legisla- tion within the ambit of constitutional limitations and upon reasonable judgment of what should have been expressed. In reality, that happens in most of the cases. Can it be con- demned as judicial usurpation of law-making functions of the legislature thereby depriving the people of their right to express their will? This is a practical dilemma which Judges must always, in cases of interpretation and construction, face and a question which they must answer.

I have noted the guidelines for the exercise of the power, preamble, relevant sections from which the reasons should be inferred and recorded, although they need not be communicate. These should be recorded in order to ensure effective judicial review in a given case. Termination simpliciter under Regulation 9(b) or similar powers can be exercised only in circumstances other than those in regula- tion 9(a). The exercise of such powers can only be for purposes germane and relevant to the statute. There are several illustrations of that, namely, the employee is incompetent or unsuitable so as to make his continuance in the employment detrimental to the interest of the institu- tion, where the continuance of the employee is a grave security risk making his continuance detrimental to the interest of the Corporation and where because of the conduct of the employee, there is lack of confidence in the employee which makes it necessary in the interest of the Corporation to immediately terminate the services of the employee. These, however, are illustrative and not exhaustive. There- fore, each case of the conferment of the power involved should be decided on the aforesaid basis.

I am conscious that clear intention as indicated in a legislation cannot be permitted to be defeated by means of construction. It has been said that if the legislature has manifested a clear intention to

exercise an unlimited power, it is impermissible to read down the amplitude of that power so as to make it limited. I do not agree. Our legislatures are limited by the constitutional inhibitions and it is time, in my opinion, that we should read their Acts and enactments with the attribute that they know their limits and could not have intended to violate the Constitu- tion. It is true that where there are clear, unambiguous and positive terms in a legislation, the Court should be loath to read down. It should proceed with a straight-forward method of striking down such legislations. But where the statute is silent or not expressive or inarticulate, the Court must read down in the silence of the statute and in the inarticulation of its provisions, the constitutional inhibitions and transmute the major inarticulate premise into a reality and read down the statute accordingly. It is true perhaps, as has been said, that in the history of constitutional law, statutes are seldom read down to mean what they say and intend. It is begging the question. If the statutes are seldom read down to mean what they say and intend. It is begging the question. If the statute does not specifically say, in such circumstances, as to how do we find the intention to transgress the constitutional limita- tions. At least, the relevant provisions of the relevant statutes and the rules, mentioned hereinbefore, are, in my opinion, on these points, not expressive enough to betray an intention transgress constitutional limitations. I am afraid that reference to Elliott Ashton Welsh, II v. United States, 398 US 333; 26 L.Ed. 2d 308 is inept in the background of the principles we are confronted with. The plain thrust of legislative enactment has to be found out in the inarticu- late expressions and in the silence of the legislation. In doing so, to say what the legislature did not specifically say, is not distortion to avert any constitutional colli- sion, In the language of the relevant provisions with which we are confronted, I do not find that intention of the legislature to flout the constitutional limitations. I am also unable to accept the contention of Mr. Garg as well as Mr. Ramamurthi that it is clear as a result of the constitutional position of the security of tenure of the employees as well as the expressed language of the provi- sions of several enactments that there is no valid power of the termination of employment of the permanent employees without holding an enquiry or giving an opportunity to the employees to rebut the charges on the grounds of termination in all circumstances. It was contended, as I have noted, by Shri R.K. Garg that no principle of interpretation permitted reading down a provision so as to make it into a different provision altogether different from what was intended by the legislature or its delegate. Reference was made to the decision of this Court in R.M.D.C. 's case (supra). I am unable to accept this contention. It is not that the reading down is used for a purpose which is just the opposite which the legislature had intended.

Legislature had not intended arbitrary or uncontrolled or whimsical power. Indeed it considered. This is not the proper way to read that power in the said Regulation 9(b). Para 522 of the Shastri Award, read properly, must be cir- cumscribed with the conditions indicated above as a neces- sary corollary or consequence of that power. It is also not reading to the legislature conditions which were not there in the second proviso Article 311(2) of the Constitution. In view of the ratio of the five-judge Bench decision of this Court in Tulsiram's case (supra), which had examined all the relevant decisions, I am unable to accept the submission of Shri R.K. Garg and Mr. Ramamurthi. Absolute powers, it is true, cannot be regulated without essential legislative policy, but here properly read, absolute power was not there. Power that was only constitutionally valid, that power can be presumed to have been given and if that pre- sumption is made, conditions indicated above inevitably attach.

We are not concerned with the concept of industrial democracy sought to be propounded by Mr. Garg in this case. The validity and the propriety of having industrial democra- cy is not in issue. What is in issue is demonstrable fair play and justice, as sought for by Mr. Garg, in the exercise of the power which must be conceded as an essential at- tribute for proper functioning of the

institution. It is true that no drafts as such have been submitted by the learned Attorney General or by the learned Solicitor General nor by any counsel appearing for the management. But these conditions, which we have noted, are necessary corol- lary flowing from the conferment of the power of termination in a constitutional manner for the smooth, proper and effi- cient running of the industry.

In the aforesaid view of the matter, 1 am unable to accept the submissions of Mr. Garg and Mr. Ramamurthi. The power must be there, the power must be read down in the manner and to the extent indicated above, in my opinion, of terminating the services of permanent employees without holding any enquiry in the stated contingencies and this would be by either virtue of the silence of the provision indicating the contingencies of termination or by virtue of constitutional inhibitions. That reading would not violate the theory that judges should not make laws.

In the aforesaid view of the matter, I direct that whenever question of exercise of the power of termination of permanent employees by reasonable notice without holding any enquiry arises, the extent of the power should be read in the manner indicated above and we reiterate that such powers can be exercised for the purposes of the Act which will be determinable by the pream- ble and by relevant enacting provisions and the contingen- cies for the exercise of the power must be specified and powers should be exercised by authority competent and inde- pendent enough and should be articulated by reasons stated even if not communicated. These are the limitations inherent and latent in the framework of our Constitution and the power with these limitations is valid.

Having regard to the aforesaid view, I will have to dispose of the appeals in terms of the aforesaid principles. Next the question arises--what would be the position of the rights and liabilities determined as anterior to or before our reading these powers to be conditioned as afore- said. Having regard to the finality of the position of law and having regard to the theory that parties have adjusted their rights on the understanding of the law as it was, in our opinion, justice of the situation would be met if we declare and hold that pending litigations should be examined in the light of the aforesaid principles and dispose of in the aforesaid light, namely, where issues of damages or consequences of termination by virtue of exercise of the power are still pending adjudication in any forum and have not been finally adjudicated, these should be re-examined by the appropriate authorities before whom these issues are pending in the light of these principles, that is say, the exercise of the power should be judged on these conditions and in the light of those conditions. If in the light of these conditions, the exercise of the power is valid, the termination should be held to be valid, if on the other hand, there was exercise without compliance with these conditions, the termination would be invalid and conse- quences in law of damages or reinstatement or others will follow. But previous terminations where the lis is no longer pending before any authority will not be reopened. To that extent. I will declare this to be the law prospectively. I had, after circulating the draft judgment herein, the advantage of the views of my learned brothers. They do not agree with me. With respect. I am definitely of the opinion that time has come for the judicial interpretation to play far more active, creative and purposeful role in deciding what is "according to law". Law as evolved in India today, in my opinion, makes the limitations on user of power quite clear and distinct, in this branch. These are constitutional limitations. Therefore, every provision in any legislation by limited legislatures, in my opinion, should be judged bearing in mind that the legis- lature and the law-making authorities were aware and are bound by these constitutional limitations. These inhibitions must be read into these provisions so that law becomes effective, purposeful and legal. In that view of the matter, I am of the opinion that we should approach the question of constitutional limitations or inhibitions in our interpreta- tion in deciding in each individual cases by

not 'what has been' but 'what may be'. This is the role and purpose of constitutional interpretation by the apex Court of the country. I know that this view of mine is not shared in this decision by my learned brothers. I respect their views, but I would like to hope that one day or the other this Court would be mature enough to fulfil what is purposeful and I believe to be the true role and purpose of the Court in interpretation in the light of constitutional inhibitions. Having had the advantage of the views of my learned broth- ers, I regret, with respect, I cannot join them in their views. I am the loser for the same, but I will fondly hope only for the time being.

I believe that we must do away with 'the childish fic- tion' that law is not made by the judiciary. Austin in his Jurisprudent at page 65, 4th edn. has described the BIack- stone's principle of finding the law as 'the childish fic- tion'. Chief Justice K. Subba Rao in I.C. Golak Nath & Ors. v. State of Punjab & Ant'., [1967] 2 SCR 762 at p. 811 has referred to these observations. This Court under Article 14 1 of the Constitution is enjoined to declare law. The ex- pression 'declared' is wider than the words 'found or made'. To declare is to announce opinion. Indeed, the latter in- volves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by this Court is the law of the land. To deny this power to this Court on the basis of some outmoded theory that the Court only finds law but does not make it, is to make ineffective the powerful in- strument of justice placed in the hands of the highest judiciary of this country. See the observations of Chief Justice K. Subba Rao in 1. C. Golak Nath & Ors'. v. State of Punjab & Anr., (supra at pp. 813/14). I would, therefore, plead for a more active and creative role for the courts in declaring what the law is.

In the aforesaid light, in Civil Appeal No. 2876 of 1986, having regard to the facts and the circumstances and the attitude taken by the Delhi Transport Corporation, I do not interfere with the order of the High Court. The appeal shall, therefore, fail.

Having regard to the facts and the circumstances and the observations above. Civil Appeal No. 655 of 1984 (M.L. Kamra v. Chairman-cum-Managing Director, New India Assurance Co.) will be placed before a division bench of this Court to be disposed of in accordance with law and the light of the observations made herein.

For the reasons that I have indicated above, in Civil Appeal No. 1115 of 1976 (Satnam Singh v. Zilla Parishad Ferozepur & Anr.,), with the facts herein where apparently no reasons were recorded, the appeal of Satnam Singh suc- ceeds and in the interest of justice, the monetary relief should be given to the appellant which is quantified at Rs.4,83,061.90 paise (Rupees four lakhs eighty three thou- sand and sixty one and ninety paise). I have indicated before the basis on which this quantification has been made. For the same reasons, Civil Appeal No. 4073(NL) of 1986 (Mahesh Kumar Giroti v. Regional Manager, Region 11, Region- al Office, State Bank of India, Bareilly & Ors.), Civil Appeal No. 331 of 1987 (The Delhi Transport Corporation & Anr. v. Shri Hans Raj), Civil Appeal No. 328 of 1987 (The Delhi Transport Corporation & Anr. v. Shri Rohtash Singh), Special Leave Petition No. 75 12 of 1987 (Delhi Transport Corporation v. Shri Mohinder Singh & Anr.), and Civil Appeal No. 330 of 1987 (The Delhi Transport Corporation & Anr. v. Shri Prem Singh) should be placed before the divi- sion bench of this Court to be disposed of in accordance with the observations made herein and in accordance with law. The appeals I would dispose of accordingly. Intervention of the parties are allowed and the C.M.Ps. are disposed of in the aforesaid terms.

RAY, J. I have had the privilege of deciphering the judgment rendered by the learned Chief Justice. As the question involved in these groups of appeals for decision is very important, it is deemed necessary to express my views on this important matter.

The pivotal question which arises for consideration is whether Regulation 9(b) of the Regulations framed under section 53 of the Delhi Road Transport Act, 1950 which provides for termination of services of permanent employees on giving simply one month's notice or pay in lieu thereof without recording any reason therefore in the order of termination is arbitrary, illegal, discriminatory and viola- tive of Audi Alteram Partern Rule and so constitutionaly invalid and void. It is also necessary to consider in this respect whether the said Rule 9(b) can be interpreted and read down in such a manner to hold that it was not discriminatory nor arbitrary nor does it confer unbridled and uncanalised power on the trans- port authority to, terminate, however, the services of any employee including permanent employee without any reason whatsoever by the Delhi State Transport Authority. It is also necessary to consider whether such a power can be exercised without conforming to the fundamental right em- bodied in the Article 14 as interpreted by this Court in E.P. Royappa's case that arbitrariness is the anti-thesis of equality enshrined in Article 14 of the Constitution. In other words, whether such a regulation has to comply with the observance of fundamental rights guaranteed by Part III of the Constitution and whether such a power is to be exer- cised in furtherance of and in consonance with the Directive Principles embodied in Article 38 and 39 of the Constitu- tion.

It is convenient to set out the relevant provisions of Regulation 9(b) framed by the Delhi Road Transport Authority under the 1950 Act.

9(b) Termination of services

(b) Whether the termination is made due to reduction of establishment or in circumstances other than those mentioned in (a) one month's notice or pay in lieu thereof will be given to all categories of employees.

On a plain reading of this Regulation it is apparent that the authority has been conferred the power to terminate the services of any employee whether permanent or temporary by giving the month's notice or pay in lieu thereof without recording any reason whatsoever in the purported order of termination of services. Thus a regular, temporary or perma- nent employee of the State Transport Authority can be dis- missed or removed from service at the whims and caprices of the concerned authority without any reason whatsoever and undoubtedly this evidence that such unbridled, indiscrimi- nate and uncanalised power to terminate the services even of a permanent employee without assigning any reason and with- out giving any opportunity of hearing as far play and jus- tice demands a reasonable procedure is per se, arbitrary and discriminatory. It has been contended by the Attorney Gener- al, appearing on behalf of the State that such a power is not uncanalised or unbridled and arbitrary in as much as firstly such power has been conferred on the responsible authority namely D.T.C. for public purposes and secondly, the Regulation 9(b) is to be read down so as to make it constitutionally valid. It will be seen that there is guidance for exercise of this power in the regulation itself. It has also been submitted in this connection by the learned Attorney General that a provision of the Constitution has to be presumed to be valid unless it is proved by the other side challenging the con- stitutional validity of such a provision that the same is arbitrary and so void. Several authorities have been cited at the Bar on this point.

It is profitable to refer to the earlier pronouncements of this Court on this crucial question. Rules 148(3) and 149(3) in contravention of the provision of Article 14 of the Constitution were challenged before this Court in the case Moti Ram Deka etc. v. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., [1964] 5 SCR 683. Rule 148(3) of the Railways Establishment Code is set out here under: "148(3) "Other (non-pensionable) railway servants: The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Arti- cle 311 of the Constitution, retirement on attaining the age of superannuation and termination of service due to mental or physical incapacity."

In this case the service of Moti Ram Deka, a peon em- ployed by the Railway and Sudhir Kumar Das a confirmed clerk, whose services have been terminated under Rule 148(3) of the said Rules challenged the termination of their serv- ices before the Assam High Court which rejected the same and ultimately it came up to this Court on Special Leave. It was held by the Majority that Rules 148(3) and 149(3) are in- valid in as such as they are inconsistent with the provi- sions of Art. 311(2), as they purport to removal from serv- ice of permanent servants without compliance with the proce- dure prescribed by Article 311(2). It was also held that the Rule 148(3) contravenes Art. 14 as it does not give any guidance for exercise of the discretion by the authority concerned and hence it is invalid.

It is necessary to refer in this connection to the pronouncement of this Court in the case of Parshotam Lal Dhingra v. Union of India, [1958] SCR 828 where it has been held that protection of Article 311 is available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. Thus even the probationer or temporary employee if removed from service or dismissed from service as a penal measure having civil consequences has to conform to the procedure prescribed by Article 311(2) of the Constitution. Even a probationer who has no right to the post cannot be removed from service as a penal measure without complying with Article 311(2) of the Constitution.

In the case of Shyam Lal v. The State of Uttar Pradesh and Anr., [1955] SCR 26 it was held by this Court that a compulsory retirement from service under the Civil Services (Classification, Control and Appeal) Rules does not amount to dismissal or removal within the meaning of Article 311 of the Constitution and therefore does not fall within the provision of the said Act.

In the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others, [1959] SCR 279 the constitutionali- ty of the Commission of Enquiry Act, 1952 was challenged. It was held that the Act was valid and intra vires and that the notification was also valid excepting the words "as and by way of securing redress or punishment" in CI. 10 thereof which went beyond the Act.

It has been further held that it is now well settled that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legis- lation. Thus, to pass the test of permissible classification two conditions must be fulfilled, namely, that (i) That the classification must be rounded on an intelligible differen- tia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. It has also been held that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its

discriminations are based on adequate grounds.

This Court observed in Jyoti Pershad v. The Administra- tor For the Union Territory of Delhi, [1962] 2 SCR 125 while holding that Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, was not obnoxious to the equal protec- tion of laws guaranteed by Art, 14 of the Constitution, there was enough guidance to the competent authority in the use of his discretion under Section 19(1) of the Act. The restrictions imposed by Section 19 of the Act could not be said to be unreasonable.

It has been further observed that (1) If the statute itself or the rule made under it applies unequally to per- sons or things similarly situated, it would be an instance of a direct violation of the Constitutional Guarantee and the provision of the statute or the rule in question would have to be struck down.

(2) The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the legislature vests a discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legisla- tion which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authori- ty with unguided and arbitrary powers enabling it to dis- criminate.

In State of Orissa v. Dr. (Miss) Binapani Dei & Ors., [1967] 2 SCR 625 the respondent joined service of the State Government in 1938. In the service record certain date of birth was recorded. In 196 1 Government held enquiry as to date of birth and she was asked to show cause why a certain date of birth should not be taken as a date of birth. The enquiry report was not disclosed to her and she was not given any opportunity to meet the evidence. The Government refixed her date of birth and ordered that she will be compulsorily retired. It was held that such a enquiry and decision were contrary to the basis concept of justice and cannot have any value. It is true that the order is adminis- trative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after inform- ing the first respondent of the case of State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State. In A.K. Kraipak and Others v. Union of India and Others, [1969] 2 SCC 262 it has been held at page 268-269 Paragraph 13:

"The dividing line between an administrative power and a quasi judicial power 'is quite thin and is being gradually obliterated. For determining whether a power is an adminis- trative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law per- vades over the entire field of administration. Every organ of the State under our Constitution is regulated and con- trolled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a

judicial power are merely those which facilitate if not ensure a just and fair decision .....

What was considered as an administrative power some years back is now being considered as a quasi'judicial power. ' ' In the case of Union of India v. Col. J.N. Sinha and Anr., [1971] 1 SCR 79 1. Col. J.N. Sinha was compulsorily retired by an order of the President of India dated 13.8.69 under Section 56(j) of the Fundamental Rules from Government service without assigning any reason in the order. The High Court on a writ petition against the impugned order held that there was violation of principles of natural justice. On an appeal on Special Leave this Court held: "Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak and Ors. v. Union of India "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. If a statutory provision can be read consist- ently with the principles of natural justice, the courts should do so because it must be presumed that the legislature and the statutory authorities intend to act in accord- ance with the principles of natural justice. But on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the princi- ples of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the ex- press words of the provisions conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power." It was held that Fundamental Rule 56(j) does not in term require that any opportunity should be given to the con- cerned servant to show cause against the compulsory retire- ment. The order of the President is, therefore, not bad as the authority bona fide forms that opinion.

In the case of Air India Corporation v. V.A. Rebello & Anr., AIR 1972 SC 1343 the service of the respondent was terminated under Regulation 48 of the Air India Employees' Service Regulations. The said Regulation 48 reads as under: CHAPTER VIII--Cessation of Service

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48. Termination: The service of an employee may be terminat- ed without assigning any reason, as under:

(a) of a permanent employee by giving him 30 days' notice in writing or pay in lieu of notice;

(b) of an employee on probation by giving him 7 days' notice in writing or pay in lieu of notice;

(c) of a temporary employee by giving him 24 hours' notice in writing or pay in lieu of notice.

In this case the complainant, V.A. Rebello was dismissed from service under Regulation 48 by paying salary of 30 days in lieu of notice. The order does not suggest any misconduct on behalf of the complainant and it is not possible to hold that the order was passed on any misconduct. This has been challenged by the complainant by filing a complaint before the National Industrial Tribunal. Under Section 33-A of the Industrial Disputes Act, 1947 the order was challenged as amounting to dismissal from service. The Tribunal held in its award that the discharge of the respondent is not a discharge simplic- iter but in breach of section 33-A of Industrial Disputes Act and as such directed the complaint to be considered on the merits. On appeal by Special Leave this Court while

considering the purpose and scope of Section 33(1) and 33(2) of the Industrial Disputes Act, held following its decision in The Workmen of Sudder Office Cinnamara v. The Management, [1971] 2 Lab LJ 620 as follows:

"That if the termination of service is a colourable exercise of the power vested in the management or as a result of victimisation or unfair labour practice, the Industrial Tribunal would have jurisdiction to intervene and set aside such a termination. In order to find out whether the order of termination is one of termination simpliciter under the provisions of contract or of standing orders, the Tribunal has ample jurisdiction to go into all the circumstances which led to the termination simpliciter. The form of the order of termination, is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is, therefore, open to the Tribunal to go behind the form of the order and look at the substance. If the Tribunal comes to the conclusion that though in form the order amounts to termination simpliciter but in reality cloaks a dismissal for misconduct, it will be open to it to set aside the orders as a colourable exercise of power by the management." The same principles have also been reiterated in the later decision of this Court in Tara Oil Mills Co. Ltd. v. Workmen & Anr., [1964] 2 SCR 125. It has been observed in this case:

"That the position of the industrial workman is different from that of a Government servant because an industrial employer cannot "hire and fire" his workmen on the basis of an unfettered right under the contract of employment, that right now being subject to industrial adjudication; and there is also on the other hand no provision of the Consti- tution like Arts. 3 10 and 311 requiring consideration in thecase of industrial workmen."

It has been further observed:

"That Regulation 48 which has been set out earlier as its plain language shows does not lay down or contemplate any defined essential pre-requisite for invoking its operation. Action under this Regulation can be validly taken by the employer at his sweet will without assigning any reason. He is not bound to disclose why he does not want to continue in service the employee concerned. It may be conceded that an employer must always. have some reason for terminating the services of his employee. Such reasons apart from misconduct may, inter alia, by want of full satisfaction with his overall suitability in the fact that the employer is not fully satisfied with the overall result of the performance of his duties by his employee does not necessarily imply misconduct on his part."

In the case of Maneka Gandhi v. Union of India, [1978] 2 SCR 62 1. The petitioner was issued a passport on June 1, 1976 under the Passport Act, 1967. On the 4th July, 1977, the petitioner received a letter dated 2nd July, 1977, from the Regional Passport Officer, Delhi, intimating to her that it was decided by the Government of India to impound her passport under s. 10(3)(c) of the Act "in public interest." The petitioner was required to surrender her passport within 7 days from the receipt of that letter. The petitioner immediately addressed a letter to the Regional Passport Officer requesting him to furnish a copy of the statement of reasons for making the order as provided in Section 10(5), reply was sent by the Government of India, Ministry of External Affairs on 6th July 1977 stating inter alia that the Government decided "in the interest of the general public" not to furnish her copy of the statement of reasons for the making of the order. The petitioner challenges the action of the Government in impounding her passport by a writ petition. Sub-section (1) of Section 10 empowers the Passport Authority to vary or cancel the endorsement on a passport or travel document or to vary or cancel it on the conditions subject to which a passport or travel

document has been issued having regard to, inter alia, the provisions of s. 6(1) or any notification under Section 19. Sub-section (2) confers powers on the Passport Authority to vary or cancel the conditions of the passport or travel document on the application of the holder of the passport or travel document and with the previous approval of the Central Government, Sub-section (3) provides that the Passport Authority may impound or cause to be impounded or revoke a passport or travel document on the grounds set out in cl.(a) to (h). The order impounding the passport in the present case was made by the Central Govern- ment under cl. (c) which reads as follows:

"(c) If the passport authority deems it necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with the foreign country, or in the interest of the general public." It was held that the right to travel and go outside the country is included in the right to Personal Liberty. In order to apply the test contained in Arts. 14 and 19 of the Constitution we have to consider the objects for which the exercise of inherent rights recognised by Art. 21 of the Constitution are restricted as well as the procedure by which these restrictions are sought to be imposed, both substantive and procedural laws and actions taken under them will have to pass the test imposed by Arts. 14 and 19, whenever facts justifying the invocation of either of these Articles may be disclosed. Violation for both Arts. 21 and 19(1)(g) may be put forward making it necessary for the authorities concerned to justify the restriction imposed by showing satisfaction of tests of validity contemplated by each of these two Articles.

The tests of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be rea- sonable. The discretion left to the authority to impound a passport in public interest cannot invalidate the law it- self.

The orders under Section 10(3) must be based upon some material even if the material concerns in some cases of reasonable suspicion arising from certain credible asser- tions made by reliable individual. In an emergent situation, the impounding of a passport may become necessary without even giving an opportunity to be heard against such a step which could be reversed after an opportunity is given to the holder of the passport to show why the step was unnecessary. It is well-settled that even if there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an indi- vidual, which affects the right of that individual the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

An order impounding a passport must be made quasi-judi- cially. This was not done in the present case. It cannot be said that a good enough reason has been shown to exist for impounding the passport of the petitioner. The petitioner had no opportunity of showing that the ground for impounding it given in this Court either does not exist or has no bearing on public interest or that the public interest can be better served in some other manner. The order should be quashed and the respondent should be directed to give an opportunity to the petitioner to show cause against any proposed action on such grounds as may be available. Even executive authorities when taking administrative action which involves any deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patent- ly impartial and meets the requirements of natural justice. It is also pertinent to refer in this connection the pronouncement of this Court in the case of E.P. Royappa v. State of Tamil Nadu and Anr., [1974] 2 SCR 348. "Equality and arbitrariness are sworn enemies, one belongs to the rule of law in a public

while the other to the whim and caprice of an absolute monarch. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omni-presence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14, it must be right and just and fair and not arbitrary, fanciful or oppressive." In the case of Municipal Corporation of Greater Bombay v. Malvenkar and Ors., [1978] 3 SCR 1000 the services of respondent No. 2, a permanent clerk in the Bombay Electric Supply and Transport Undertaking, which is run by the appel- lant were terminated from the close of work on January 23,' 1968 as her record of service was unsatisfactory. The order of termination stated that the respondent No. 2 should be paid one month's wages in lieu of notice and would also be eligible for all the benefits as might be admissible under the Standing Orders and Service Regulations of the Undertaking. The respondent No. 2 made an application before the Labour Court under Section 42(4) of the Bombay Industrial Relations Act contending that the order terminating her services was invalid as it was not passed by the competent authority as envisaged by the Stand- ing Order and that the so called Executive Assistant to the General Manager had no authority to terminate her services because no validly sanctioned post of that designation existed on 20th or 23rd January, 1968. It was also contended that the aforesaid oders besides being mala fide was viola- tive of the principles of natural justice in as much as the same was passed without holding any enquiry. The Labour Court dismissed the application. The respondent's appeal before the President of the Industrial Court was however allowed. The Industrial Court held that the impugned orders bore only the initials of the Central Manager and therefore it was passed by an authority which was lacking in authori- ty, the wording "unsatisfactory service record" cast a stigma and was patently punitive attracting the non-observ- ance of Standing Order No. 26 which did not create an abso- lute right in the management to terminate the services of an employee for misconduct without holding an enquiry or giving her a fair opportunity of being heard. A Writ application filed by the appellant was dismissed holding inter alia that the appellant was dismissed holding inter alia that the fact that Standing Order 26 required reasons to be mentioned in the order terminating the services of an employee did not mean that an order of dismissal on the ground of misconduct could be converted into an order of discharge simpliciter by mentioning therein the nature of misconduct.

While allowing the appeal on Special Leave it was held by this Court that under Standing Order 26 powers have been given to the Management in a particular case and this ques- tion has to be determined having regard to the substance of the matter and not its form. One is the power of holding disciplinary enquiry under clause (3) of Standing Order 231 read with standing Order 23 and the other is the power to terminate the services of an employee by one calendar month's written notice or pay in lieu thereof under Standing Order 26. The question is as to which power has been exer- cised by the Management in a particular case and this ques- tion has to be determined having regard to the substance of the matter and not its form. There are two distinct and independent powers and as far as possible, neither should be construed so as to emasculate the other or to render it ineffective. One is the power to punish an employee for misconduct while the other is the power to terminate sim- pliciter the service of an employee without any other ad- verse consequences. Proviso (i) to clause (1) of Standing Order 26 requires that the reason for termination of the employment should be given in writing to the employee when exercising the power of termination of services of the employee under Standing Order 26. The Management is required to articulate the reason which operated in its mind for terminating the services of the employee. But merely because the reason must obviously not be arbitrary. capricious or irrelevant, it would not necessarily in every case make the order of termination punitive in character so as to require compliance with the

requirements of clause (2) of Standing Order 21 read with Standing Order 23. It was further held that the service of the respondent was not satisfactory was undoubtedly based on past incidents set out in the record but for each of these incidents punishment is one form or another had already been meted out to her and it was not by way of punishment for any of these incidents, but because as gathered from these incidents, her record of service was unsatisfactory that her service was terminated by the man- agement under Standing Order 26. The appellant produced satisfactory evidence to show that the impugned order termi- nating the service of the respondent was justified and hence the impugned order must be sustained despite its having been passed without complying with the requirements of clause (2) of Standing Order 21 read with Standing Order 23. This decision has been made in the special facts and circum- stances in that particular case.

In the case of Manohar P. Kharkhar And Anr. v. Raghuraj & Anr., [1981] 4 LLJ 459 the petitioners challenged the order of termination of services dated 29.4. 1981, under Regulation 48 of Air India Employees' Service Regulations. The petitioner No. 1 was The Director of Engineering and the Head of the Engineering Department while the petitioner No. 2 was Deputy Director of Engineering (Maintenance) and the Head of the Maintenance Division of the Air India Corpora- tion. The Chairman and Managing Director of the said Corpo- ration lost confidence in their ability and suitability to hold such important posts of Head of Departments which were reasonable for maintenance of the Air Crafts, safety of the Air Crafts and safety of the passengers carried therein and the order of termination were based on the note of The Chairman dated 29.4. 1981. Loss of confidence was the result of the negligence and failure to discharge their duty culmi- nating in the admitted sabotage in the case of Makalu, an air craft for the flight of VVIP. On this occasion the petitioners services were terminated on April 29, 1981 by the Chairman who recorded in its record the ground of loss of confidence. This order was challenged as arbitrary and capricious and Regulation 48 was violative of Article 14 of the Constitu- tion as it contained to guidelines for choosing between employees and employees, occasion to occasion for the con- templated action.

In negativing the contentions, it was held after exhaus- tively analysing the note dated 29.4.1981, that sheer un- suitability and unfitness to hold office is not a misconduct in its generic sense or in its artificial meaning under Regulation 42. Regulations 42 to 44 have no application. Confidence in the petitioners' suitability was lost due to such overall inefficiency of the departments under the petitioners. Conclusions could not be different even if it assumed that the note contemplated finding of the petition- ers guilty of gross inefficiency and negligence. Inefficien- cy by itself did not amount to misconduct in its generic sense.

It was further held that the petitioners have no right to the post and do not possess any security of tenure. It was also held that if the Corporation choose to act under Regulation 48 and the action is not mala fide, arbitrary or capricious the question of its having acted in colourable exercise of its power could not arise. It was further held that the power conferred under Regulation 48 to terminate the services of permanent employees on 30 days notice with- out assigning any reason is not violative of Article 14 of the Constitution. Accordingly the writ petition was dis- missed and the rule was discharged. This decision however has not duly considered the ratio of the decision made by this Court in L. Michael & Anr. v. Johnaton Pumps India Ltd., [1975] 3 SCR 489 and also in the case of Air India Corporation v. V.A. Rebello, (supra) as well as the ratio of the decision in the case of Sukhdev Singh & Ors. v. Bhagat Ram Sardar Singh Raghuvanshi & Anr., [1975] 1 SCC421. In the case of S.S. Muley v. J.R.D. Tata & Ors., [1979] 2 SLR 438 constitutionality came up for consideration and this Court held the said Regulation 48 to be discriminatory and void as it gives unrestricted and unguided power on the Authority concerned to terminate the services of a

permanent employee by issuing a notice or pay in lieu thereof without giving any opportunity of hearing to the employee concerned and thereby violating the principles of natural justice and also Article 14 of the Constitution. In West Bengal State Electricity Board & Ors. v. Desh Bandhu Ghosh and Others, [1985] 3 SCC 116 the first respond- ent, a permanent employee of the West Bengal State Electric- ity Board, filed the writ petition out of which the appeal arises in the Calcutta High Court to quash an order dated March 22, 1984 of the Secretary, West Bengal State Electric- ity Board terminating his services as Deputy Secretary with immediate effect on payment of three months' salary in lieu of three months' notice. The order was made under Regulation 34 of the Board's Regulations which enables the Board to terminate the services of any permanent employee 'by serving three months' notice or on payment of salary for the corre- sponding period in lieu thereof." The Regulation 34 reads as follows:

"34. In case of a permanent employee, his services may be terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof." This order of termination was challenged on the ground that Regulation 34 was arbitrary in nature and it was pat- ently discriminatory. The High Court struck down the first paragraph of Regulation 34 and quashed the order of termina- tion of service of the first respondent.

In the case of Workmen of Hindustan Steel Ltd. and Anr. v. Hindustan Steel Ltd. and Ors., [1985] 2 SCR 428. Standing Order 32 which provided for conferment of power in the General Manager to terminate the services of an employee if satisfied for reasons recorded in writing that it was inex- pedient or against the order of security to employ the workman, the workman could be removed or dismissed from service without following the procedure laid down in Stand- ing Order 31.

"32. Special Procedure in certain cases.

Where a workman has been convicted for a criminal offence in a Court of law or where the General Manager is satisfied, for reasons to be recorded in writing, that it is inexpedi- ent or against the interests of security to continue to employ the workman, the workman may be removed or dismissed from service without following the procedure laid down in Standing Order 31."

The appellant, an Assistant in the 1st Respondent-under- taking was removed from service on the ground that it was 'no longer expedient' to employ him. The management dispensed with the departmental enquiry, after looking into the secret report of one of their officers that the appellant had misbehaved with the wife of an employee and that a complaint in respect thereof had been lodged with the police. The Tribunal held that as the employer dispensed with the disciplinary enquiry in exercise of the power conferred by Standing Order 32, it could not be said that the dismissal from service was not justified and the respondent was quite competent to dismiss him from service without holding any enquiry. It was held that the reasons for dispensing with the enquiry do not spell out what was the nature of the miscon- duct alleged to have been committed by the appellant and what prompted the General Manager to dispense with the enquiry.

As there was no justification for dispensing with the enquiry imposition of penalty of dismissal without the disciplinary enquiry as contemplated by Standing Order 31 is illegal and invalid.

It was further held that :-"A Standing Order which confers such arbitrary. uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interest of the security to continue to employ the workman is violative of the basic requirement of natural justice

inasmuch as that the General Manager can impose penalty of such a drastic nature as to affect the livelihood and put a stigma on the character of the workman without recording reasons why disciplinary inquiry is dis- pensed with and what was the misconduct alleged against the employees. It is time for such a public sector undertaking as Hindustan Steel Ltd. to recast S.O. 32 and to bring it in tune with the philosophy of the Constitution failing which it being other authority and therefore a State under Art. 12 in an appropriate proceeding, the vires of S.O. 32 will have to be examined. It is not necessary to do so in the present case because even on the terms of S.O. 32, the order made by the General Manager is unsustainable."

In the case of Tata Oil Mills Co. Ltd. v. Workmen & Anr., (supra) the service of Mr. Banerjee, an employee of the appellant, was terminated on the ground that the appel- lant had lost confidence in him and in lieu of notice he was paid one month's salary. The Union to which Mr. Banerjee belonged took up his cause and on the failure of -'he par- ties to reach a settlement the matter was referred to the Industrial Tribunal by the Government. It was contended before the Tribunal by the appellant that the order of termination of services of Mr.Banerjee was an order of discharge which it was competent to make under R. 40(1) of the Service Rules, whereas the re- spondent contended that the termination was not a discharge simpliciter but was in substance dismissal and that the Tribunal was entitled to consider the propriety of the appellant's action.

The Tribunal held that it had jurisdiction to look into the reasons behind the discharge of an employee. On the examination of the evidence the Tribunal found that no mala fides on the part of the employer had been proved and that the termination of service did not amount to victimisation or unfair labour practice. Even so it held that the dis- charge was not justified and directed the reinstatement of Mr. Banerjee.

This Court held that in the matter of an order of dis- charge of an employee the form of the order is not decisive. An Industrial Tribunal has jurisdiction to examine the substance of the matter and decide whether the termination is, in fact, discharge simpliciter or it amounts to dismiss- al which has put on the cloak of discharge simpliciter. The test always has to be whether the act of the employer is bona fide or whether it is a mala fide and colourable exer- cise of the powers conferred by the terms of contract or by the standing orders.

In O.P. Bhandari v. Indian Tourism Development Corpora- tion Ltd. and Others, [1986] 4 SCC 337. The question of constitutionality of Rule 31(v) of the Indian Tourist Devel- opment Corporation Rules came up for consideration before this Court in this case. Rule 31 is quoted below: "31. Termination of services--The services of an employee may be terminated by giving such notice or notice pay as may be prescribed in the contract of service in the following manner:

(v) of an employee who has completed his probationary period and who has been confirmed or deemed to be confirmed by giving him 90 days' notice or pay in lieu thereof." It has been observed by this Court:

"This rule cannot co-exist with Articles 14 and 16(1) of the Constitution of India. The said rule must therefore die, so that the fundamental rights guaranteed by the aforesaid constitutional provisions remain alive. For otherwise. the guarantee enshrined in Articles 14 and 16 of the Constitu- tion can be set at naught simply by framing a rule authoriz- ing termination of an employee by merely giving a notice. In order of uphold the validity of the rule in question it will have to be held that the tenure of service of a citizen who takes up employment with the State will depend on the pleas- ure or

whim of the competent authority unguided by any principle or policy. And that the services of an employee can be terminated though there is no rational ground for doing so. even arbitrarily or capriciously. To uphold this right is to accord a "magna carta" to the authorities in- vested with these powers to practice uncontrolled discrimi- nation at their pleasure and caprice on considerations not necessarily based on the welfare of the organisation but possibly based on personal likes and dislikes, personal preferences and prejudices. An employee may be retained solely on the ground that he is asycophancy and indulges in flattery, whereas the services of one who is meritorious (but who is wanting in the art of sycophancy and tempermen- tally incapable of indulging in flattery) may be terminated. The power may be exercised even on the unarticulated ground that the former belongs to the same religious faith or is the disciple of the same religious teacher or holds opinions congenial to him. The power may be exercised depending on whether or not the concerned employee belongs to the same region. or to the same caste as that of the authority exer- cising the power, of course without saying so. Such power may be exercised even in order to make way for another employee who is favourite of the concerned authority. Pro- vincialism, casteism, nepotism, religious fanaticism, and several other obnoxious factors may in that case freely operate in the mind of the competent authority on deciding whom to retain and whom to get rid of. And these dangers are not imaginary ones. They are very much real in organisations where there is a confluence of employees streaming in from different States. Such a rule is capable of robbing an employee of his dignity, and making him a supine person whose destiny is at the mercy of the concerned authority (whom he must humour) notwithstanding the constitutional guarantee enshrined in Articles 14 and 16 of the Constitu- tion of India. To hold otherwise is to hold that the fundamental right embedded in Articles 14 and 16(1) is a mere paper tiger and that is so ethereal that it can be nullified or eschewed by a simple device of framing a rule which authorizes termination of the service of an employee by merely giving a notice of termination. Under the circum- stances the rule in question must be held to be unconstitu- tional and void."

This decision followed the observations of this Court in Central Inland Water Transport Corporation Limited And Another v. Brojo Nath Gangtdy and Another and West Bengal State Electricity Board v. Desh Bandhu Ghosh and Ors., (Supra).

In Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Another, [1986] 3 SCC 156 the appellant Corporation is a Government Company incor- porated under the Companies Act. The Majority shares of the Corporation are held by the Union of India and the remaining shares are held by the State of West Bengal and Assam. Article 47 provided for appointment and reappointment of the auditors of the Corporation to be made by the Central Gov- ernment on the advice of the Comptroller and AuditorGeneral of India and the nature of control to be exercised by the Comptroller and Auditor-General in the matter of audit and accounts. Article 51-A entitled the President to call for returns, accounts etc. of the Corporation. The respondents in the two appeals were in the service of the said company. Their appointment letters were in a stereotype form under which the Corporation could without any previous notice terminate their services. A Scheme of Arrangement was en- tered into between the Corporation and that company for dissolution of the latter and takeover of its business and liabilities by the former. The Scheme inter alia stipulated that the Corporation shall take as many of the existing staff or labour as possible and that those who could not be taken over shall be paid by the concerned company all moneys due to them under the law and all legitimate and legal compensations payable to them either under Industrial Dis- putes Act or otherwise legally admissible and that such moneys shall be provided by the Government of India to the transferor Company who would pay these dues. The two re- spondents were in the service of the said company and their services were taken over by the

Corporation after the Scheme of Arrangement was sanctioned by the High Court. The re- spondent Ganguly was appointed as the Deputy Chief Accounts Officer and was later promoted as Manager (Finance), the respondent Sengupta was appointed as Chief Engineer (River Services) and was later promoted as General Manager (River Services). Rule 9(i) of the Corporation's Service, Discipline and Appeal Rules of 1979 provided that the services of a perma- nent employee could be terminated on three months' notice on either side or on payment of three months' pay plus DA to the employee or on deduction of a like amount from his salary as the case may be in lieu of the notice. A notice under Rule 9(i) was served on him terminating his services with immediate effect by paying three months' pay. Both Ganguly and Sengupta filed writ petition before High Court and a Division Bench of that Court allowed the same. The Corporation filed appeals before Supreme Court. The impugned questions for determination were (i) whether the appellant Corporation was an instrumentality of the State so as to be covered by Articles 12 and 36 of the Constitution and (ii) whether an unconscionable term in a contract of employment entered into with the Corporation was void under Section 23 of the Contract Act and violative of Article 14 and as such whether Rule 9(i) which formed a part of the contract of employment between the Corporation and its employees to whom the said Rules applied, was void? This Court held that it being a Government Company within the meaning of Article 12 of the Constitution has to comply with the rights embodied in Part III of the Constitution and the Directive Principles in Part IV of the Constitution. It was further held that by extending the executive power of the Union and each of the States to the carrying on any trade or business. Article 298 does not convert either the Union of India or any of the States which collectively form the Union into a merchant buying and selling goods or carrying on either trading or business activity, for the executive power of the Union and the States, whether in the field of trade or business or in any other field, is always subject to constitutional limitations and particularly the provisions relating to Fundamental Rights in Part III and is exercisa- ble in accordance with and for the furtherance of the Direc- tive Principles of State Policy.

Rule 9(i) can aptly be called the 'Henry VIII Clause'. It confers an absolute. arbitrary and unguided power upon the Corporation. It does not even state who on behalf of the Corporation is to exercise that power. While the Rules provide for four different modes in which the services of a permanent employee can be terminated earlier than his at- taining the age of superannuation, namely, Rules 9(i), 9(ii). 36(iv)(b) read with Rules 38 and 37. Rule 9(i) is the only rule which does not state in what circumstances the power conferred by the rule is to be exercised. Thus even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry, it is free to resort instead to Rule 9(i) in order to avoid the hassle of an inquiry. No opportunity of a hearing is at all to be afforded to the permanent employee whose service is being terminated in the exercise of this power. It thus violates audi alteram partent rule of natural justice also which is implicit in Article 14. It is not covered by any of the situations which would justify the total exclusion of the audi alteram partem rule. The view that the Board of Directors would not exercise this power arbitrarily or capriciously as it consists of responsible and highly placed persons ignores the fact that however highly placed a person may be he must necessarily possess human frailties and "power tends to corrupt, and absolute power corrupts abso- lutely."

Rule 9(i)is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him Rule 9(i). It can pick up another employee and apply to him Rule 9(ii). It can pick up yet another employee and apply to him Rule 36(iv)(b) read with Rule 38 and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a

regular disciplinary inquiry into the alleged misconduct of the employee.

This court in Delhi Transport Undertaking v. Balbir Saran Goel, [1970] 3 SCR 757 considered the question whether the services of a permanent employee under Delhi Transport Undertaking could be terminated under Regulation 9(b) of the Regulation without complying with the procedure prescribed by Regulation 15 and (ii) whether although the order was made in perfectly harmless and innocuous terms purporting to be within Regulation 9(b) it was a mere camouflage for inflicting punishment for breach of Standing Order 17. as the respondent approached the High Court without exhausting the Departmental remedies and held that the order was not proved to be made mala tide on the part of the authority terminating the service nor the question of mala fide was gone into by the Courts below.

Regulation 9(b) empowered the authorities to terminate the service after giving one month's notice or pay in lieu thereof. The order was held to have been made unequivocally in terms of the Regulation 9(h) as the employee was a con- tankerous person and it was desirable to retain him in service. The order was upheld. The question whether Regulation 9(b) was illegal and void as it conferred arbitrary and uncanalised power to terminate the service of a permanent employee without recording any reason and with- out giving any opportunity of hearing before passing the purported order as required under Article 14 of the Consti- tution was neither raised nor considered in this case. In L. Michael & Anr. v. M/s Johnston Pumps India Ltd., (supra) the services of the appellant, an employee of the respondent, were terminated by the latter giving him one month's notice as per. the standing orders without assigning any reasons for the termination. An industrial dispute was referred to the Labour Court. The management alleged that the employee misused his position by passing an important and secret information about affairs of the company to certain outsiders, that even after he was transferred to another section he made attempts to elicit information from the section with a view to pass it on to outsiders, and that therefore, the management lost confidence in the employee and terminated his services by a bona fide order. The Labour Court confirmed the order.

On appeal this Court set aside the order holding that the Labour Court has misled itself on the law. This Court directed reinstatement of the employee with all back wages. The manner of dressing up an order does not matter. The Court will lift the veil to view the reality or substance of the order.

The Tribunal has the power and indeed the duty to X-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the ina- bility to establish by an inquiry, illegitimately but inge- niously passes an innocent looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new armour for the manage- ment; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catend of cases of this Court can be subverted by this neo formula Loss of Confidence in the law will be the consequence of the Loss of Confidence doctrine.

An employer who believes and suspects that his employee particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of employment permit terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspi- cion or' the employer should not be a mere whim or fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively', in good faith. which means honestly and with due care and prudence. If the

exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour prac- tice. the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicial- ly.

This Court in the case of workmen of Hindustan Steel Ltd. and Ant. v. Hindustan Steel Ltd. and Ors., (supra) while considering the constitutionality of Standing Order 32 of the Hindustan Steel Ltd. which conferred power on the General Manager to remove or dismiss a workman without following the procedure for holding a disciplinary enquiry laid down in Standing Order 31 observed that: "It is time for such a public sector undertaking as Hindu- stan Steel Ltd. to recast S.O. 32 and to bring it in tune with the philosophy of the Constitution failing which it being other authority and therefore a State under Article 12 in an appropriate proceeding, the views of S.O. 32 will have to be examined."

It is convenient to refer in this context relevant passage in paragraph 4 in Chitty on Contracts, 25th Edition, Volume 1:

"These ideas have to a large extent lost their appeal today. 'Freedom of contract', it has been said, 'is a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interest of the community at large.' Freedom of contract is of little value when one party has no alternative between accepting a set of terms proposed by the other or doing without the goods or services offered. Many contracts entered into by public utility undertakings and others take the form of a set of terms fixed in advance by one party and not open to discussion by the other. These are called 'contracts d'adhesion' by French lawyers. Traders frequently contract, not on individually negotiated terms, but on those contained in a standard form of contract settled by a trade association. And the terms of an employee's contract of employment may be deter- mined by agreement between his trade union and his employer, or by a statutory scheme of employment. Such transactions are nevertheless contracts notwithstanding that freedom of contract is to a great extent lacking."

This Court has observed in Central Inland Water Trans- port Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr.. (supra)as under:

.... Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discus- sions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreason- able clause in a contract. entered into between parties who arc not equal in bargaining power ..... It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them."

The Court has. therefore, the jurisdiction and power to strike or set aside the unfavourable terms in a contract of employment which purports to give effect to unconscienable bargain violating Art. 14 of the Constitution Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9(b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any

opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14 of the Constitution. It has also been held consistently by this Court that the Govern- ment carries on various trades and business activity through the instrumentality of the State such as Government Company or Public Corporations. Such Government Company or Public Corporation being State 'instrumentalities are State within the meaning of Article 12 of the Constitution and as such they are subject to the observance of fundamental rights embodied in Part III as well as to conform to the directive principles in Part IV of the Constitution. In other words the Service Regulations or Rules framed by them are to be tested by the touchstone of Article 14 of Consti- tution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), therefore, confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised. It is now well settled that the 'audi alteram partem' rule which is es- sence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedure- ly. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regula- tion 9(b) does not expressly exclude the application of the 'audi alteram partern' rule and as such the order of termi- nation of service of a permanent employee cannot be passed by simply issuing a month's notice under Regulation 9(b) or pay in lieu thereof without recording any reason in the order and without giving any hearing to the employee to controvert the allegation on the basis of which the purport- ed order is made.

It will be profitable to refer in this connection the observations of this Court in the case of Union of India and Anr. v. Tulsiram Patel and Ors., [1985] Supp. (2) SCR 131 where the constitutionality of provisions of Art. 311 par- ticularly the 2nd proviso to clause (2) of 'the said Article came up for consideration. This Court referred to the find- ings in Roshan Lal Tandon v. Union of India, [1968] 1 SCR 185 wherein it was held that though the origin of a Govern- ment service is contractual yet when once appointed to his post or office, the Govern- ment servant acquires a status and his rights and obliga- tions are no longer determined by the consent of both the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-work of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. It has been observed that Art. 14 does not govern or control Art. 311. The Constitution must be read as a whole. Art. 311(2) embodies the principles of natural jus- tice including audi alteram partem rule. Once the applica- tion of clause (2) is expressly excluded by the Constitution itself, there can be no question of making applicable what has been so excluded by seeking recourse to Article 14 of the Constitution.

In the case of Sukdev Singh & Ors. v. Bhagatrarn Sardar Singh Raghuvanshi & Anr. (supra), Mathew, J. pointed out that:

"The governing power wherever located must be subject to the fundamental constitutional limitations." This has been referred to and relied upon in Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr. (supra) and a similar Rule 9(i) was termed as "Henry VIII clause" as it confers arbitrary and absolute power upon the Corporation to terminate the service of a permanent employee by simply issuing a notice or pay in lieu thereof without recording any reason in the order and without giving any opportunity of hearting to the employee. Thus, the Rule 9(i) of the Services Discipline and Appeal Rules, 1979 was held void under Section 23 of the Indian Contract Act, 1872, as being opposed to public policy and is also ultra vires of Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice.

Regulation 9(b) of the impugned Regulation framed under the Delhi Transport Corporation Act which is in pare materia with the said Rule 9(i) is void under Section 23 of the Contract Act as being opposed to public policy and is also ultra vires of Article 14 of the Constitution. Another crucial question is to consider how far the impugned provisions of Regulation 9(b) framed under the Delhi Road Transport Act can be read down in order to save it from unconstitu- tionality. Several decisions have been cited at the bar in order to impress upon the Court that the impugned provisions have been made for public purposes and for public interest and as such it should be read down in a manner that will save the said provisions from the on-slaught of constitu- tional invalidity.

In the case of Commissioner of Sales Tax, Madhya Pra- desh, Indore and Ors. v. Radhakrishnan and Ors., [1979] 2 SCC 249 it has been held by this Court that for sustaining the presumption of constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived and can even read down this section.

It is convenient to mention here the meaning and scope of the word 'reading down' and 'Severance' dealt with on page 7, para B in Australian Federal Constitutional Law by Colin Howard which reads as follows:

"The High Court presumes the validity of legislation to the extent that it will not of its own motion raise questions of constitutionality. Legislation is treated as valid unless the parties to litigation challenge it on constitutional grounds. The techniques of construction known as reading down and severance are corollaries of this presumption. Reading down puts into operation the principle that so far as it is reasonably possible to do so, legisla- tion should be construed as being within power. It has the practical effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the court will construe it in a more limited sense so as to keep it within power.

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It does not necessarily follow that because a statute cannot be read down it is wholly invalid. The presumption of valid- ity leads naturally to the view that where a statute cannot be held wholly valid

it should be held valid at least to the extent that it is reasonably possible or practicable to do so. Where reading down is not available the court next decides where there is a case for severing the invalid parts of the statute from the parts which, standing alone, are valid. If this can be done the court declares only the invalid parts to be beyond power and leaves the remainder operative.

In Re The Hindu Women's Rights to Property Act, 1937, and The Hindu Women's Rights to Property (Amendment) Act, 1938 and in Re a Special Reference under Section 2 13 of the Government of India Act, 1935, [1941] FCR 12 the question arose whether the Hindu Women's Rights to Property Act, 1937 (Central Act XVIII of 1937) and the Hindu Women's Rights to Property (Amendment) Act, 1938 (Central Act XI of 1938), are applicable to agricultural land and what was the meaning of the word 'property'. It was observed that:

"When a Legislature with limited and restricted powers makes use in an Act of a word of such wide and general import as "property", the presumption must be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other. The word "proper- ty" in the Hindu Women's Right to Property Act must accord- ingly be construed as referring to property other than agricultural land.

There is a general presumption that a Legislature does not intend to exceed its jurisdiction."

In the case of R.M.D. Chamarbaugwalla v. The Union of India, [1957] SCR 930 the petitioners who had been promoting and conducting prize competitions in the different States of India, challenged the constitutionality of ss. 4 and 5 of the Prize Competitions Act (42 of 1955) and rr. 11 and 12 framed under s. 20 of the Act on the grounds that prize competition as defined in s. 2(d) of the Act included not merely competitions that were of a gambling nature but also those in which success depended to a substantial degree on skill and the sections and the rules violated their funda- mental right to carry on business, and were unsupportable under Act. 19(6) of the Constitution, that they constituted a single inseverable enactment and, consequently. must fail entirely. It was held that validity of the restrictions imposed by ss. 4 and 5 and rr 11 and 12 of the Act as re- gards gambling competitions was no longer open to challenge under Art. 19(6) of the Constitution in view of the decision of this Court that gambling did not fall within the purview of Art. 19(1)(g) of the Constitu- tion.

It has been further observed that:

"When a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain "the intent of them that make it" and that must of course. be gathered from the words actually used in the statute. ..... To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act ..... To decide the true scope of the present Act, therefore, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute, and construe the language of s. 2(d) in the light of the indications furnished by them."

Having regard to the circumstances, it was held that the law which the State Legislatures moved Parliament to enact under Art. 252(1) was one to control and regulate prize competitions of a gambling character and as such it was held that the Act was valid It has been further observed that where the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly

void as to the latter.

In the case of R. 1. Arora v. State of Uttar Pradesh and Ors., [1964] 6 SCR 784 challenge was thrown to the constitu- tionality of the amendments made to Ss. 40, 41 and s. 7 by the Land Acquisition Amendment Act (Act 31 of 1962) on the ground that it contravened Art. 31(2) inasmuch as it makes acquisition for a company before July 20, 1962 as being for a public purpose even though it may not be so in fact. Section 7 was also challenged on the ground that it contra- venes Art. 14 inasmuch as it makes an unreasonable discrimi- nation in the matter of acquisition for a company before July 20, 1962 and after that date insolaf as the former acquisitions are validated on the basis of their being deemed to be for a public purpose while the latter acquisi- tions are not so deemed and have to satisfy the test of public purpose.

it has been held that if the language of a provision of law is capable of only one construction and if according to that construction the provision contravenes a constitutional provision it must be struck down. A literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. It has been further held following the observa- tions in The Mysore State Electricity Board v. Bangalore Woollen, Cotton and Silk Mills Ltd. & Ors., [1963] Supp. 2 SCR 127 that it is well settled that if certain provisions of law construed in one way will be consistent with the Constitution and if another interpretation would render them unconstitutional the court would bear in favour of the former construction.

In the case of Jagdish Pandey v. The Chancellor Univer- sity of Bihar & Anr., [1968] 1 SCR 23 1 the challenge was to the constitutionality of s. 4 of Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) (Amendment) Act 13 of 1962 as discriminatory and violative of Art. 14 of the Constitution. It has been urged that s. 4 confers uncana- lised powers on the Chancellor without indicating any crite- rion on the basis of which the power under s. 4 can be exercised. It has been observed that:

" ..... There is no doubt that if one reads s. 4 literal- ly it does appear to give uncanalised powers to the Chancel- lor to do what he likes on the recommendations of the Com- mission with respect to teachers covered by it. We do not however think that the Legislature intended to give such an arbitrary power to the Chancellor. We are of opinion that s. 4 must be read down and if we read it down there is no reason to hold that the legislature was conferring a naked arbitrary power on the Chancellor."

Seervai in his book 'Constitutional Law of India', Third Edition has stated at p. 119 that:

" .... the Court are guided by the following rules in discharging their solemn duty to declare laws passed by a legislature unconstitutional:

(1) There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity."

.... (6) A Statute cannot be declared unconstitutional merely because in the opinion of the Court it violates one or more of the principles

of liberty, or the spirit of the Constitu- tion, unless such principles and that spirit are found in the terms of the Constitution."

On a proper consideration of the cases cited hereinbe- fore as well as the observations of Seervai in his book 'Constitutional Law of India' and also the meaning that has been given in the Australian Federal Constitutional Law by Coin Howard, it is clear and apparent that where any term has been used in the Act which per se seems to be without jurisdiction but can be read down in order to make it con- stitutionally valid by separating and excluding the part which is invalid or by interpretting the word in such a fashion in order to make it constitutionally valid and within jurisdiction of the legislature which passed the said enactment by reading down the provisions of the Act. This, however, does not under any cicumstances mean that where the plain and literal meaning that follows from a bare reading of the provisions of the Act, Rule or Regulation that it confers arbitrary, uncanlised, unbridled, unrestricted power to terminate the services of a permanent employee without recording any reasons for the same and without adhering to the principles of natural justice and equality before the law as envisaged in Article 14 of the Constitution, cannot be read down to save the said provision from constitutional invalidity by bringing or adding words in the said legisla- tion such as saying that it implies that reasons for the order of termination have to be recorded. In interpreting the provisions of an Act, it is not permissible where the plain language of the provision gives a clear and unambigu- ous meaning can be interpreted by reading down and presuming certain expressions in order to save it from constitutional invalidity. Therefore, on a consideration of the above decisions, it is impossible to hold by reading down the impugned provisions of Regulation 9(b) framed under s. 53 of the Delhi Road Transport Act, 1950 read with Delhi Road Transport (Amendment) Act, 1971 that the said provision does not confer arbitrary, unguided, unrestricted and uncanalised power without any guidelines on the authority to terminate the services of an employee without conforming to the prin- ciples of natural justice and equality as envisaged in Article 14 of the Constitution of India. I am, therefore, constrained to uphold the judgment of the Delhi High Court in C.W.P. No. 1422 of 1985 and dismiss Civil Appeal No. 2876 of 1986. I allow Civil Appeal No.1115 of 1976 and agree with the order proposed to be passed thereon by the learned Chief Justice. The other appeals as referred to in detail in the judgment of the learned Chief Justice be placed before the Division Bench of this Court to be dis- posed of in accordance with the observations made herein. I agree with conclusion arrived of by my learned brother K. Ramaswamy, J.

SHARMA.J. I have gone through the judgments prepared by the learned Chief Justice and by my other learned Brothers. In view 01 the elaborate consideration by them of the ques- tions raised by the parties, from both points of view. I proceed to indicate my conclusions without further discus- sion.

I agree with the learned Chief Justice that the rights of the parties in the present cases cannot be governed by the general principle of master and servant, and the manage- ment cannot have unrestricted and unqualified power of terminating the services of the employees. In the interest of efficiency of the public bodies, however. they should have the authority to terminate the employment of undesira- ble, inefficient, corrupt. indolent and disobedient employ- ees. but it must be exercised fairly, objectively and inde- pendently: and the occasion for the exercise must be delim- ited with precision and clarity. Further, there should be adequate reason for the use of such a power. and a decision in this regard has to be taken in a manner which should show fairness. avoid arbitrariness and evoke credibility. And this. in my view, is possible only when the law lays down detailed guidelines in unambiguous and precise terms so as to avoid the danger of misinterpretation

of the situation. An element of uncertainty is likely to lead to grave and undesirable consequences. Clarity and precision are. there- fore. essential for the guidelines. Examining in this back- ground, I am of the view that Regulation 9(b) of the Delhi Road Transport Authority (Condition of Appointment and Service) Regulation, 1952 cannot be upheld for lack of adequate and appropriate guidelines. For these reasons Civil Appeal No. 2876 of 1986 is dismissed.

I also agree that the Civil Appeal No. 1115/76 should be allowed in the terms indicated in the judgment of the learned Chief Justice. The other cases shall be placed before a division bench for final disposal.

SAWANT..J. I had the advantage of reading the judg- ments of the learned Chief Justice and B.C. Ray and K. Ramaswamy, JJ. While with respect I agree with the conclu- sion of the learned Chief Justice in Civil Appeal No. 1115/76, with utmost respect to him, I am unable to share his view of law on the subject in Civil Appeal No. 2876/86. I am in respectful agreement with the view on the point expressed by Ray and Ramaswamy, JJ. in the said Civil Ap- peal. I give my separate reasons for the same. The only question involved in all these matters is whether the absolute power given to the Management of the public undertakings under their respective rules/regulations to terminate the services of an employee without assigning any reason, is constitutionally valid.

2. It is not necessary to refer to the facts and service rules in each case. It will be sufficient if I reproduce hereinbelow the relevant service regulation of one of the public undertakings, viz., Delhi Transport Corporation (DTC' for short) the validity of which is in question in the present case. The said regulation being Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appoint- ment & Service) Regulations, 1952 (hereinafter referred to as the "Regulations") reads as follows:

Termination of service: (a) Except as otherwise specified in the appointment orders, the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice:

(i) During the period of probation and without assigning any reasons thereof,

(ii) For misconduct,

(;,ii) On the completion of specific period of appointment, (iv) In the case of employees engaged on contract for a specific period, on the expiration of such period in accord- ance with the terms of appointment.

(b) Where the termination is made due to reduc- tion of establishment or in circumstances other than those mentioned at (a) above, one month's notice or pay in lieu thereof will be given to all categories of employees. (c) Where a regular/temporary employee wishes to resign from his post under the Authority he shall given three/one month's notice in writing or pay in lieu thereof to the Authority provided that in special cases, the General Manager may relax, at his discretion, the condition regard- ing the period of notice of resignation or pay in lieu thereof."

It will be obvious from the provisions of clause (b) the above that it applies not only in the case of retrenchment of employees on account of reduction in the establishment but also in circumstances other than those mentioned in clause (a). The circumstances mentioned in clause (a) are (i) probationary period, (ii) misconduct, (iii) completion of specific period of appointment and (iv)

expiration of contractual period of appointment when the appointment is contractual. In other words, when the management decides to terminate the services of an employee but not for his mis-conduct 'or during his probation or because his tenure of appointment, contractual or otherwise, has come to an end, it is free to do so without assigning any reason and by merely giving either a notice of the specific period or pay in lieu of such notice. Reduced to simple non-technical language, clause (b) contains the much hated and abused rule of hire and fire reminiscent of the days of laissez faire and unrestrained freedom of contract. There is no dispute that although the language differs, the substance of the relevant rules of the other public undertakings which are before us, is the same and hence what applies to Regulation 9(b) of the Regulations will apply equally to the relevant rules of the other undertakings as well.

3. The contentions advanced before us on behalf of the managements of the undertakings acknowledge at the very outset that such a service rule without anything further was not only ultra vires the Constitution but was indefensible in law even otherwise being opposed to the principles of natural justice vesting as it does the naked arbitrary power in the management. The contention, however, was that the rule had to be read down to imply that the power vested by it could be exercised only in certain circumstances and for valid reasons and not otherwise. It was further contended that the rigour of the rule is mitigated because the power granted by it is exercised by a high ranking officer. It was also urged that the exercise of the said power can be con- trolled by holding that it is open to scrutiny by the court, in individual cases. In other words, the contention was that the rule by itself is innocent and legal and its movements are properly con- trolled being under elderly care. Its occasional wayward behaviour in unguarded moments can be corrected by chastise- ment by the courts. But the rule, it was solemnly urged, was necessary since otherwise the management of the undertakings will be well-high impossible. The controversy before us thus lies in a narrow compass, viz., whether the rule whatever its admitted demerits, should continue to blot the statute book because it is necessary and will be used in certain circumstances only and its use in any other circumstances can be checked by the Court.

4. It can at once be discerned that at the bottom of all the lengthy ardent arguments lies an anxiety not to specify the circumstances under which the power given by the rule will be exercised on the spacious plea that such circum- stances cannot be stated in advance and in the interests of the administration of the undertakings it is best that they are not so stated. For once I thought that the framers of our Constitution had committed an irretrievable mistake by ignoring the interests of the Union and the State Govern- ments and enumerating such circumstances in the second proviso to Article 311(2) of the Constitution. But then I was mistaken. The interests of the public undertakings appear to be more important than those of the Governments. May be they are super-Governments. By claiming the privilege not to enumerate even the broad guidelines as contained in Article 311(2), the managements of the undertakings are indeed wearing a supercrown. The posture adopted by them is all the more obdurate and untenable in law when they ask the court to read down the rule, and read in it circumstances under which the power can be used, but maintain that they will under no circumstances mend it nor should they be asked to do it, by incorporating in it those very circumstances.

5. With this prologue to the controversy, I may now examine the contentions advanced before us. It is contended that it is necessary to retain the rule in its present ambiguous form because it is not possible to envisage in advance all the circumstances which may arise necessitating its use. When we asked the learned counsel for the manage- ments whether there were any circumstances which would not be governed by the broad guidelines given in the second proviso to subclause (2) of

Article 311 of the Constitution, and why at least such intelligible guidelines should not be incorporated in the rule, we received no reply. We could appreciate the embarrassment of the counsel, and as stated earlier. there lies the nub of the matter. What this Court in the various decisions has struck down is a similar rule in its present naked form without any guideline whatsoever, broad or otherwise. It was never the argument on behalf of the em- ployees nor indeed is it to-day before us that all the possible circumstances in which the rule may be used should be enumerated in it. Their argument has been that at least the broad circumstances under which its exercise may become necessary should be incorporated to avoid an arbitrary use or rather the abuse of power, and to guarantee the security of employment. That argument has been accepted by this Court in the past by holding that such a rule is violative of the Constitution and was not necessary to safeguard the inter- ests of the undertakings or the interests of the public. The decisions which appear to take an inconsistent view show on close analysis that either they were not dealing with the validity of the rule or were rendered when the dimensions of both Articles 14 and 21 were not expanded as they have been subsequently.

6. In the year 1990, it is not necessary for me to discuss in detail the authorities which have widened the horizons of Article 14 of the Constitution. Some of these precedents are directly on the point in as much as the validity of similar service rules was considered there. It is enough if I summarise the position of law as it obtains to-day.

There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impoli- tic to leave any aspect of its life to be governed by dis- cretion when it can conveniently and easily be covered by the rule of law.

The employment under the public undertakings is a public employment and a public property. It is not only the under- takings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be con- signed to the limbo of undefined premises and uncertain applications. That will be a mockery of them. Both the society and the individual employees, there- fore, have an anxious interest in service conditions being well-defined and explicit to the extent possible. The arbi- trary rules, such as the one under discussion, which are also sometimes described as Henry VIII Rules, can have no place in any service conditions.

These are the conclusions which flow from Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr., [1975] 3 SCR 619; Maneka Gandhi v. Union of India, [1978] 2 SCR 621; The Manager, Government Branch Press & Anr. v. D.B. Felliappa, [1979] 1 SCC 477; Managing Director, Uttar Pra- desh Warehousing Corporation & Anr. v. Vinay Narayan Vajpay- ee, [1980] 2 SCR 773; A.L. Kalra v. The Project & Equipment Corporation of India Limited, [1984] 3 SCR 646; Workmen of Hindustan Steel Ltd. & Anr. v. Hindustan Steel Ltd. & Ors., [1985] 2 SCR 428; West Bengal State Electricity Board & Ors. v. Desh Bandhu Ghosh & Ors., [1985] 2 SCR 1014; Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors. etc., [1985] Supp. 2 SCR 51; Union of India & Anr. v. Tulsiram Patel & Ors., [1985] Supp. 2 SCR 13 1; Central Inland Water Trans- port Corporation Ltd. & Anr. v. Brojo Nath Ganguly & Anr. etc., [1986] 3 SCR 156; O.P. Bhandari v. Indian Tourism Development Corporation Ltd. & Ors., [1986] 4 SCC 337; N.C. Dalwadi v. State of Gujarat, [1987] 3 SCC 611; M.K. Agarwal v. Gurgaon Gramin Bank & Ors., [1987] Supp. SCC 643 and Daily Rated Casual Labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch etc. v. Union of India & Ors., [1988] 1 SCC 122.

7. Since, before us the rule in question which admitted- ly did not lay down explicit guidelines for its use was sought to be defended only on two grounds, viz., that the power conferred by it is to be exercised only by high au- thorities and that it is capable of being read down to imply circumstances under which alone it can be used, I need deal only with the said grounds.

8. The "high authority" theory so-called has already been adverted to earlier. Beyond the self-deluding and self-asserting righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some au- thorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it. Even while Shah, J. in his dissent- ing opinion in Moti Ram Deka etc. v. General Manager, N.E.P. Railways, Maligaon, Pandu, etc., [1964] 5 SCR 683 had given vent to it, Das Gupta, J. in his concurring judgment but dealing with the same point of unguided provisions of Rule 148(3) of the Railway Establishment Code, had not supported that view and had struck down the rule as being violative of Article 14 of the Constitution. The majority did not deal with this point at all and struck down the Rule as being void on account of the discrimination it introduced between railway servants and other government servants. The reliance placed on the decision in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors., [1959] SCR 279 to support the above theory is also according to me not correct. As has been pointed out there, the Commission of Inquiry Act, 1952, the validity of which was challenged on the ground of unguided powers to institute inquiries, was not violative of Article 14 because the long title and Section 3 of the Act had contained sufficient guidelines for exercise of the power. Section 3 has stated that the appro- priate government can appoint a Commission of Inquiry only for the purpose of making inquiry into any definite matter of public importance. It is in the context of this guideline in the Act, that it is further stated there that even that power is to be exercised by the government and not any petty official. Hence a bare possibility that the power may be abused cannot per se invalidate the Act itself. The proposi- tion of law stated there is to be read as a whole and not in its truncated form. The authority does not lay down the proposition that even in the absence of guidelines, the conferment of power is valid merely because the power is to be exercised by a high official. It must further be remem- bered that in this case, the contention was that although the appropriate government was given power to appoint Com- mission of Inquiry into any definite matter of public impor- tance, the delegation of power was excessive since it was left to the government to decide for itself in each case what constituted such matter. The court repelled the argu- ment by pointing out that "definite matter of public impor- tance"

constituted sufficient guideline to the government. It was not, therefore, a case of no guideline but of the absence of details of the guideline.

Of similar nature is the reliance placed on the decision in The Collector of Customs, Madras v. Nathella Sampathu Chetty & Anr., [1962] 3 SCR 786 for the proposition that the possibility of the abuse of the powers is no ground for declaring the provision to be unreasonable or void. The relevant observations are made while repelling the conten- tion there that the burden thrown under provisions of Sec- tion 178A of the Sea Customs Act, 1878 on the possessor of the goods to show that they were not smuggled was violative of Article 19(1)(f) and (g) of the Constitution. The obser- vations are as follows:

"The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being adminis- tered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so judged it passes the test of reasonable- ness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Consti- tution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. In saying this we are not to be understood as laying down that a law which might operate harshly but still be constitutionally valid should be operated always with harshness or that reasonableness and justness ought not to guide the actual administration of such laws."

The statute there was saved by the provisions of Article 19(6) of the Constitution and was otherwise valid. It was not a case of a provision which was constitutionally invalid being saved by recourse to the spacious assumption of its reasonable exercise in individual cases.

In Tata Oil Mills Co. Ltd. v. Workmen & Anr., [1964] 2 SCR 125, it was a case of an employee of a private company who was given a discharge simpliciter. This Court following its earlier decisions on the point observed that in several cases, contract of employment or Standing Orders authorise an industrial employer to terminate the employee's service by giving one month's notice or salary of one month in lieu of notice and normally an employer may, in a proper case be entitled to exercise the power. But where such order gives rise to an industrial dispute, the form of the order would not be decisive and the industrial adjudicator would be entitled to probe it to find out whether it is mala fide or is made in colourable exercise of the power. Being a private employment, the power so conferred was not as- sailed on the ground that it violated Article 14 of the Constitution. I fail to understand the reliance placed on this authority to support the appellants' case before us.

9. The other authorities relied on behalf of the appellants have similarly no relevance to the point. In Jyoti Pershad v. The Administrator for the Union Territory of Delhi, [1962] 2 SCR 125, the Slum Clearance Act which was challenged there contained enough guidelines for the exer- cise of the power. In Municipal Corporation of Greater Bombay v. P.S. Malvenkar & Ors., [1978] 3 SCR 1000, Order 26 of the Standing Orders and Service Regulations which was in question there required reasons to be given for effecting termination simpliciter of an employee. In Organo Chemical Industries & Anr. v. Union of India & Ors., [1980] 1 SCR 61, Section 143 of the Provident Fund Act which was challenged was held to be valid since the Act contained enough guide- lines for imposing penal damages. In Champaklal Chimanlal Shah v. The Union of India, [1964] 5 SCR 190,

Rule 5 of the Central Civil Services (Temporary Services) Rules, 1949 was challenged on the ground that it discriminated between temporary and permanent employees. There was no challenge to the absolute power given by the said rule to terminate the services of temporary employees. In Ram Gopal Chaturve- di v. State of Madhya Pradesh, [1970] 1 SCR 472, it was a case of termination of a temporary Government servant's services. In Air India Corporation, Bombay v. V.A. Rebellow & Anr., [1972] 3 SCR 606, the challenge was to the termina- tion of services on the ground that it was done in colour- able exercise of power under Regulation 48 of the Air India Employees' Service Regulations. The said regulation was not challenged on the ground that it gave unchannelised and unguided power of terminating the services of employees. In Hira Nath Mishra & Ors. v. The Principal, Rajendra Medical College, Ranchi and Anr., [1973] 1 SCC 805, it was the case of the expulsior of students from college for two academic sessions pursuant to the order passed by the Principal of that college. The expulsion was effected following a confi- dential complaint received from 36 girl students residing in the girls' hostels alleging that the students in question d entered the compound of the girls' hostels at belated night and walked without clothes on them. The students were heard but the evidence of the girls was not recorded in their presence.

The Court held that under the circumstances the requirements of natural justice were fulfilled since the principles of natural justice were not inflexible and differed in differ- ent circumstances. I have not been able to appreciate the relevance of this decision to the point in issue.

10. I may now deal with the second contention vehemently urged on behalf of the appellants. The contention was that if it is possible to save a legislation by reading it down to read in it words, expressions or provisions, it should not be struck down. In order to save the present rule, it was urged on behalf of the appellants that the Court should read in it circumstances under which alone it can be used. What precise circumstances should be read in it, however, was not stated by the learned counsel. I am afraid that the doctrine of reading down a statute has been wrongly pressed into service in the present case. The authorities relied upon by the learned counsel for the appellants not only do not help the appellants but go against their case. It would be better if I first deal with the authorities cited at the Bar for they will also bring out the correct meaning and application of the said doctrine as well as its limitations. In Re The Hindu Women's Rights to Property Act, 1937, and the Hindu Women's Rights to Property (Amendment) Act, 1938 etc., [19411 FCR 12 what fell for consideration was whether the said two Act which were the Central pieces of legislation operated to regulate succession to agricultural land in the then Governors' Provinces. Admittedly, under the scheme of the then Government of India Act, 1935, after April 1, 1937, the Central Legislature was precluded from dealing with the subjects numerated in List II of the 7th Schedule so far as the Governors' Provinces were concerned. Laws with respect to the "devolution of agricultural land" could be enacted only by the Provincial Legislatures (Entry No. 21 of List II) and wills, intestacy and succession, save as regards agricultural land appeared as Entry No. 7 of List III, i.e., the Concurrent List. Hence, it was obvious that the said Acts enacted as they were by the Central Legisla- ture could not have dealt with succession to agricultural land so far as the Governors' Provinces were concerned. It is in these circumstances that the Federal Court read the two Acts of 1937 and 1938 as being not operative to regulate succession to agricultural land in the Governors' Provinces but operative to regulate devolution by survivorship of property other than agricultural land. It will thus be obvious that the limited purpose for which the doctrine of reading down was called into play in that case was to ex- clude from the purview of the Act a subject which was not within the competence of the legislature which had enacted it.

In Nalinakhya Bysack v. Shyam Sunder Haldar & Ors., [1953] SCR 533 the expression "decree for

recovery of pos- session" in Section 18(1) of the West Bengal Premises Rent Control (Temporary Provisions) Act (XVII of 1950) fell for consideration, and the controversy was whether it included also an order for recovery of possession made under Section 43 of the Presidency Small Cause Court Act, 1882 and hence a person against whom an order under the latter provision was made was not entitled to claim relief under the former provision. In that connection the Court observed as follows: "It must always be borne in mind, as said by Lord Halsbury in Commissioner for Special Purposes of Income Tax v. Pem- sel, LR 189 1 AC 53 1 at p. 549, that it is not competent to any Court to proceed upon the assumption that the Legisla- ture has made a mistake. The Court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature the Court cannot, as pointed out in Crawford v. Spooner, 6 Moo. PC 1; 4 MIA 179; aid the Legislature's defective phrasing of an Act or add and amend or, by con- struction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russel of Killowen in Hansraj Gupta v. Official Liquidator of Dehra Dun-Mussoorie Electric Tramway Co. Ltd., [1933] LR 60 IA 13; AIR 1953 PC 63 for others than the Courts to remedy the defect. In our view it is not right to give to the word "decree" a meaning other than its ordinary accepted meaning and we are bound to say, in spite of our profound respect for the opinions of the learned Judges who decided them, that the several cases relied on by the respondent were not correctly decided."

In R.M.D. Chamarbaugwalla v. The Union of India, [1957] SCR 930, more or less a similar situation arose. The Parlia- ment had enacted the Prize Competitions Act to provide for the control and regulation of the prize competitions, and Section 2 of the Act had defined "Prize Competitions" to mean "any competition (whether called a crossword prize competition, a missing-word competition, a picture prize competition or by any other name), in which prizes are offered for the solution of any puzzle based upon the build- ing up, arrangement, combination or permutation of letters, words or figures". The validity of.the restrictions imposed by the Act was challenged as going beyond Article 19(6) of the Constitution. The Court took a recourse to the doctrine of reading down and held that the definition of prize competition given in Section 2(d) of the Act had in view only such competitions as were of gambling nature and no others. The Court further held there that in interpreting an enactment the Court should ascertain the intention of the legislature not merely from a literal meaning of the words used but also from such matters as the history of the legis- lation, its purpose and the mischief which it seeks to suppress.

In Kedar Nath Singh v. State of Bihar, [1962] Supp. 2 SCR 769, the challenge was to the constitutional validity of Section 124A of the Indian Penal Code. Two views were before this Court with regard to the ambit of the said section. One which held that words, deeds or writings constituted the offence of sedition under the said section only when they had the intention or tendency to disturb public tranquility, to create public disturbance or to promote disorder. The other view was that it was not an essential ingredient of the offence of sedition under the said section that the words, deeds or writings should be intended to or be likely to incite public disorder. The latter view of the section would have rendered it unconstitutional. It is in these circumstances that this Court held that the former view' should be taken which would render the said section consti- tutional. The Court in that connection also further held that keeping in mind the reasons for the introduction of the said section and the history of sedition the former view was the correct interpretation of the ambit of the said section. In R.L. Arora v. State of Uttar Pradesh & Ors., [1964] 6 SCR 784, the validity of Sections 40 and 41 of the Land Acquisition Act, 1894, and of Section 7 of the Amending Act, was similarly upheld by placing on them construction which would render them constitutional. The relevant provisions were construed to mean that where land is acquired for

the construction of a building or work which subserves the public purpose of the industry or work in which a company is engaged or is about to be engaged, it can be said that the land was acquired for a public purpose.

In Jagdish Pandey v. The Chancellor, University of Bihar & Anr. [1968] 1 SCR 231, Section 4 of the Bihar State Uni- versities (University of Bihar, Bhagalpur and Ranchi) (Amendment) Act 13 of 1962 was called in question as being violative of Article 14 of the Constitution on the ground that the said section did not make any provision for giving the teacher a hearing before passing the order thereunder. By that section, every appointment, dismissal etc. of any teacher of a college affiliated to the University (but not belonging to the State) made on or after 27th November, 1961 and before 1st March, 1962 was to be subject to such order as the Chancellor of the University may on the recommendation of the University Service Commission established under Section 48 of the said Act pass with respect thereto. The Court held that the said section was not invalid on the ground of unchannelised power given to the Chancellor because it never authorised the Chancellor to scrutinise the relevant ap- pointments for satisfying himself that they were in accord- ance with University Act and its Statutes etc. The Court further held that although the said section did not make a provision for giving the teacher a hearing before passing order thereunder, such hearing must be read in the said section which the Commission had to give according to the principles of natural justice before making its recommenda- tions to the Chancellor. In Shri Umed v. Raj Singh & Ors., [1975] 1 SCR 918, one of the questions which fell for consideration was whether the expression "to withdraw or not to withdraw from being a candidate" referred to the stage of withdrawal of candida- ture under Section 37 and whether it applied to a situation where a contesting candidate announced that he does not wish to contest the election or declared his intention to sit down after the last date for withdrawal of candidature under Section 37 had passed. Over-ruling its earlier decision in Mohd. Yunus Salim's case AIR 1974 SC 12 18, the Court held that the function of the Court is to gather the intention of the legislature from the words used by it, and it would not be right for the Court to attribute an intention to the legislature which though not justified by the language used by it, accords with what the Court conceives to be reason and good sense and then bend the language of the enactment so as to carry out such presumed intention of the legisla- ture. For the Court to do so would be to overstep its lim- its. The Court also held that the words used by the legisla- ture must be construed according to their plain natural meaning, and in order to ascertain the true intention of the legislature, the Court must not only look at the words used by the legislature but should also have regard to the con- text and the setting in which they occur. The word "context" has to be construed in a wide sense to mean all the provi- sions of the Act which bear upon the same subject matter and these provisions have to be read as a whole and in their entirety each throwing light and illumining the meaning of the other.

In Sunil Batra etc. v. Delhi Administration & Ors., [1973] 4 SCC 494 it was held that under Section 30(2)of the Prisons Act which provided that a prisoner under sentence of death shall be confined in a cell apart from all other prisoners, did not mean that he has to be confined cellularly or separately from the rest of the prisoners so as to put him in a solitary confinement. The said expression had a restricted meaning and it only meant that such a prisoner has to be kept in a separate cell but one which is not away from the other cells. Thus, the said expression, viz. "shall be confined in a cell apart from all other prisoners" in the said provision was read down to exclude solitary confinement.

In Excel Wear etc. v. Union of India & Ors., [1979] 1 SCR 1009, one of the questions before this Court was whether the Court could read in Section 25-O (2) of the Industrial Disputes Act that it was incumbent on the authority to give reasons in his order for refusing permission to close down

the undertaking. The Court answered it in the negative. Although in the discussion that follows explicit reasons for the same are not found, it is legitimate to presume that the Court did not accept the said contention because of the clear and explicit language of the said section. In Minerva Mills Ltd. & Ors. v. Union of India & Ors., [1981] 1 SCR 206, the majority judgment has discussed the limitations of the doctrine of reading down which is rele- vant for our purpose. In that case, it was contended on behalf of the State that Article 31C should be read down so as to save it from the challenge of unconstitutionality and it was urged that it would be legitimate to read into that Article the intendment that only such laws would be immu- nised from the challenge under Article 14 and 19 as did not damage or destroy the basic structure of the Constitution. The Court opined that "to do so in that case would involve a gross distortion of the principle of reading down depriving that doctrine of its only or true rationale when words of width are used inadvertently." According to the Court, "the device of reading down is not to be resorted to in order to save the susceptibilities of the law makers, nor indeed to imagine a law of one's liking to have been passed. One must at least take the Parliament at its word when, especially, it undertakes a constitutional amendment .... If the Parliament has manifested a clear intention to exercise an unlimited power, it is impermissi- ble to read down the amplitude of that power so as to make it limited. The principle of reading down cannot be invoked or applied in opposition to the clear intention of the legislature. We suppose that in the history of the constitu- tional law, no constitutional amendment has ever been read down to mean the exact opposite of what it says and intends. In fact, to accept the argument that we should read down Article 31C, so as to make it conform to the ratio of the majority decision in Kesavananda Bharati, is to destroy the avowed purpose of Article 31C as indicated by the very heading "Saving of certain laws" under which Articles 31, 3 lB and 31C are grouped. Since the amendment to Article 31C was unquestionably made with a view to empowering the legislatures to pass laws of a particular description even if those laws violate the discipline of Articles 14 and 19, it seems to us impossible to hold that we should still save Article 3 iC from the challenge of unconstitutionality by reading into that Article words which destroy the rationale of that Article and an intendment which is plainly contrary to its proclaimed purpose." The Court then dealt with the argument of the learned Additional Solicitor General who contended that it was still open to the Court under Article 3 IC of the Constitution to decide whether the law enacted pursuant to it secured any of the Directive Principles of the State Policy and whether the object of the Directive Principles could not be secured without encroaching upon the Fundamental Rights and the extent to which encroachment was necessary and whether such encroachment violated the basic structure of the Constitu- tion. The Court opined that this argument was open to the same criticism to which the argument of Attorney General was open and that "it would be sheer adventurism of a most extraordinary nature to undertake the kind of judicial enquiry which according to the learned Additional Solicitor General, the courts are free to undertake." The Court fur- ther held that in the very nature of things it was difficult for a court to determine whether a particular law gave effect to a particular policy and whether a law was adequate enough to give effect to that policy. It was pointed out by the Court that it was not possible for the Court to set aside the law so enacted as invalid merely because in the opinion of the Court, the law was not adequate enough to give effect to that policy. The Court further pointed out that "the only question open to judicial review was whether there was a direct and reasonable nexus between the impugned law and the provisions of the Directive Principles. The reasonableness was to be examined with regard to such nexus and not with regard to the impugned law. Hence, it was not open to the Court to undertake the kind of enquiry suggested by the Additional Solicitor General. That would involve an extensive judicial review which was impermissible in law." The Court then pointed out that where the express words of the statute are clear and intended to give power without limitation, the statute cannot be saved by reading into them words and intendment of a diametrically opposite meaning and content. The

Court opined that provisions such as these provide a striking illustration of the limitations of the doctrine of reading down.

In Union of India & Anr. etc. v. Tulsiram Patel etc., [1985] 3 SCC 398 the majority judgment asserts that when the statute expressly excludes the rule of audi alteram partem, there is no scope for reintroducing it by a side-door to provide the enquiry which has been expressly prohibited. In Elliott Ashton Welsh, II v. United States, 398 US 333; 26 L. ed. 2nd 308 while making useful observations on the doctrine of reading down and of recasting the statute, in his concurring opinion Harlan, J. stated as follows: "When the plain thrust of a legislative enactment can only be circumvented by distortion to avert an inevita- ble constitutional collision, it is only by exalting form over substance that one can justify this veering off the path that has been plainly marked by the statute. Such a course betrays extreme skepticism as to constitutionality, and, in this instance, reflects a groping to preserve the conscientious objector exemption at all cost. I cannot subscribe to a wholly emasculated con- struction of a statute to avoid facing a latent constitu- tional question, in purported fidelity to the salutary doctrine of avoiding unnecessary resolution of constitution- al issues, a principle to which I fully adhere. It is, of course, desirable to salvage by construction legislative enactments whenever there is good reason to believe that Congress did not intend to legislate consequences that are unconstitutional, but it is not permissible, in my judgment, to take a lateral step that robs legislation of all meaning in order to avert the collision between its plainly intended purpose and the commands of the Constitution. It must be remembered that although this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute ... or judicially rewriting it. To put the matter another way, this Court will not consider the abstract question of whether Congress might have enacted a valid statute but instead must ask whether the statute that Con- gress did enact will permissibly bear a construction rendering it free from constitutional defects.

The issue comes sharply into focus in Mr. Justice Cardozo's statement for the Court in Moore Ice Cream Co. v. Rose, 289 US 373,379; 77 L ed. 1245, 1270:

'A statute must be construed, if fairly possi- ble, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.' ... But avoidance of a difficulty will not be pressed to the point of disingenuous evasion. Here the intention of the Congress is revealed too distinctly to permit us to ignore it because of mere misgivings as to power. The problem must be faced and answered." If an important congressional policy is to be perpetuated by recasting unconstitutional legislation, as the prevailing opinion has done here, the analytically sound approach is to accept responsibility for this decision. Its justification cannot be by resort to legislative intent, as that term is usually employed, but by a different kind of legislative intent, namely the presumed grant of power to the courts to decide, whether it more nearly accords with Congress' wishes to eliminate its policy altogether or extend it in order to render what Congress plainly did intend, constitutional."

11. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situa- tions. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionali- ty. It is an extention of the principle that when two inter- pretations are possible--one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitu- tion. The second situation which summons its aid is where the provisions of the statute are vague and

ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provi- sion occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the Court to remake the statute. Its only duty is to strike it down and leave it to the legisla- ture if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires an extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.

12. Judged in the context of the above principles I am of the view that the doctrine cannot be availed of for saving the present regulation- In the first instance, the regulation is a part of the service regulations of the employees made by the Delhi Road Transport Authority in exercise of the powers conferred by sub-section (1) read with clause (c) of sub-section (2) of Section 53 of the Delhi Road Transport Act, 1950 (hereinafter referred to as the "Act"). The object of the Act is to provide for the establishment and the regulation of Road Transport Authority for the promotion of a co-ordinated system of road transport in the State of Delhi. There is nothing either in the object of the service regulations of which the present regulation is a part or in the object of the Act which has a bearing on the said Regulation 9(b). If anything, the object of the Act would require framing of such service regulations as would ensure dedicated and diligent employees to run the undertak- ing. The dedication of the employees would pre-suppose security of employment and not a constant hanging of the Democle's sword over their head, and hence would in any case not bear the existence of such regulation. Secondly, the language of the regulation is so crystal clear that no two interpretations are possible to be placed on it and hence it is not permissible to read in it any meaning other than what is clearly sought to be conveyed by it. Thirdly, the context of the said regulation makes it abundantly clear that it is meant to be a naked hire and fire rule and the authority has been vested with unguided and arbitrary power to dispense with the services of any category of the employees. Sub- clause (a) of the said Regulation 9 mentions elaborately the circumstances in which the services of an employee can be terminated without any notice or pay in lieu of such notice. Sub-clause (b) follows closely on its heel and states in clear language that when the termination is made due to reduction of establishment or in circumstances other than those mentioned in subclause (a), one month's notice or pay in lieu thereof is all that is necessary to be given for terminating an employee's services. The intention of the rule-making authority, therefore, is more than clear. It was to give an absolute free hand without any limitations whatsoever to terminate the services of any employee. Both the language of the regulation as well as the context in which it is cast leave no scope for reading into it any further provision. What is more, the kind of recasting which is suggested on behalf of the appellants would not only distort the intention of the rule-making authority but would also require extensive amendment to it of a very vague nature. The appellants suggest firstly that we should read into the regulation a provision that the concerned employee would be given a hearing. The suggestion itself begs the question: Hearing for what? Is he to be heard with regard to his misconduct? If so, it will require that he should first be intimated of the misconduct of which he is guilty. But that kind of a situation is taken care of by sub-clause (a) of the said regulation. There is, therefore, no need of a separate provision for the same. If, on the other hand, the services of an employee are to be terminated on grounds other than those mentioned in sub-clause (a), then those grounds being unknown to the employee, cannot be met by him even if he is given a hearing. The reading in the rule of a mere provision of a hearing is, therefore, meaningless. The other suggestion made on behalf of the appellants is still more objectionable. The

suggestion was that we should read in the rule all circumstances where it is not possible or necessary to hold an enquiry. 1 thought that such situations are capable of being formulated easily and conveniently at least in general terms as is done by the Constitution-makers in the second proviso to Article 311(2). In fact, one of the public undertakings viz., Indian Airlines has come out with such regulation being amended Regulation 13 of its Employ- ees' Service Regulations, and the same has been placed on record by them. What is necessary to note in this connection is that the reading of such circumstances in the existing regulation would require its extensive recasting which is impermissible for the Court to do. 1 know of no authority which supports such wide reading down of any provision of the statute or rule/regulation. For all these reasons the doctrine of reading down is according to me singularly inapplicable to the present case and the arguments in sup- port of the same have to be rejected.

13. I am, therefore, of the view that there is no sub- stance in this appeal. I would rather that the long departed rule rests in peace at least now. Hence I dismiss Civil Appeal No. 2876/86 with costs.

1 allow Civil Appeal No. 1115 of 1976 and agree with the order proposed to be passed therein by the learned Chief Justice.

The rest of the civil appeals, and Special Leave Peti- tion (Civil) No. 7612 of 1987 be referred to the Division Bench for disposal in accordance with the opinion expressed in Civil Appeal No. 2876 of 1986 hereinabove. The applica- tion for intervention are allowed.

K. RAMASWAMY, J: 1. These batch cases concern, a refer- ence. the correctness of the ratio rendered in Central Inland Water Transport Company Limited v. Brojonath Ganguly, [1986] 3 SCC. 156 = AIR 1986 SC 1571 (for short Brojo Nath). The facts in C.A. No. 2886/86 lie in a short compass and sufficient for deciding the controversy are stated thus:

2. The Delhi Transport Corporation, a statutory body terminated the services of its three permanent employees, the Conductor (R. 2), Asstt. Traffic Incharge (R. 3), and the Driver (R. 4) for their alleged inefficiency, by exer- cising the power of Regulation 9(b) of Delhi Road Transport Authority (Conditions of appointment and Services) Regula- tion, 1952 (for short "the Regulation") framed under section 53 of the Delhi Road Transport Act, 1950 read with Delhi Transport (Amendment) Act, 1971 (for short "the Act"). The first respondent union assailed the validity of the Regula- tion which the High Court of Delhi struck it down as offend- ing Articles 14 and 16 of the Constitution. The High Court solely relied on the ratio in Brojo Nath whose correctness is the subject of the reference: My learned brother, My Lord the Chief Justice extensively stated the argument of the counsel on either side. Therefore, to avoid needless burden on this judgment, I consider it redundant to reiterate them once over.

3. Regulation 9(b) of the Regulations read thus: Termi- nation of Services:

"Whether the termination is made due to reduction of establishment or in circumstances other than those mentioned in (a) above, one. month's notice or pay in lieu thereof will be given to all categories of employees" as is similar to Rule 9 of the Rules in Brojo Nath's case (supra) which this Court declared to be Henry VIII clause, conferring an absolute, arbitrary and unguided power upon that Corporation and was held to be ultra vires of the provisions of the Constitution and was void under section 23 of the Indian Contract Act. As stated earlier, the correctness thereof is the primary question in these appeals.

4. Sri Ashok Desai, the learned Solicitor General vehe- mently contended that, under ordinary law of "master and servant" the Corporation is empowered by the Contract of Service to terminate the services of its employees in terms thereof. The declaration in Brojo Nath's case that such a contract is void, under section 23 of the Indian Contract Act or opposed to public policy offending the Fundamental Rights and the Directive Principles, is not sound in law. He contends that as a master the Corporation has unbridled right to terminate the contract in the interests of efficient functioning of the Corporation or to maintain discipline among its employ- ees. The termination, if is found to be wrongful, the only remedy available to the employees is to claim damages for wrongful termination but not a declaration as was granted in Brojo Nath's case. In support thereof, he cited passages from Chitti on Contract, Halsbury's Laws of England and the ratio in Union of India v. Tulsiram PateI, [1985] Supp. 2 SCR 131 = AI 1985 SC. 1416. He also placed strong reliance on Industrial Law and the decisions of this Court cited by my learned brother, the Chief Justice. Alternatively he contended that the relevant regulations would be read down so as to be consistent with Arts. 14 and 16(1) read with Art. 19(1)(g) of the Constitution and the authority invested with such power could in an appropriate case, report to terminate the services of an employee expeditiously without recourse to an elaborated enquiry and opportunity of hear- ing. The latter contention of reading down the relevant rules received support from the learned Attorney General Sri Soli J. Sorabjee and other counsel appearing for the employ- ers. M/s. M.K. Ramamurthi, R.K. Garg, and P.P. Rao, learned counsel appearing for the employees resisted these conten- tions.

5. The main controversy centres round the question whether the employer, Statutory Corporation or instrumental- ity or other authority under Art. 12 of the Constitution has unbridled power to terminate the services of a permanent employee by issue of notice or pay in lieu thereof without inquiry or opportunity, in exercise of the power in terms of contract which include statutory Rules or Regulations or instructions having force of law. It is undoubted that under ordinary law of master and servant, whether the contract of service is for a fixed period or not, if it contains a provisions for termination of service by notice, in terms thereof, it can be so determined and if the contract finds no provisions to give notice and the contract of service is not for a fixed period, law implies giving of a reasonable notice. Where no notice or a reasonable notice was issued, before terminating the contract, the termination of the contract of service is wrongful and the aggrieved employee is entitled at law to sue for damages. But this common law principle could be applied to the employees, appointed by a Statutory Corporation or authority or an instrumentality within the meaning of Article 12 of the Constitution is the square question. It is not disputed that Delhi Road Transport Corporation is a Statutory Corporation under the Act and the Regulations are statutory and its employees are entitled to the fundamental Rights enshrined in Part III of the Consti- tution. It is well settled law by a heed role of decisions of this Court that the Corporation or a Statutory Authority or an instrumentality or other authority under Art. 12 of the Constitution is not free, like an ordinary master (a private employer), to terminate the services of its employ- ees at its whim or caprices or vagary. It is bound by the Act and the Regulation and the paramount law of the land, the Constitution.

Nature of the Power Statutory Authority to terminate the services of its employees.

6. In Sukhdev Singh v. Bhagatram, [1975] 3 SCR. 619 = AIR 1975 SC. 1331, the Constitution Bench of this Court put a nail in the coffin of the play of the private master's power to hire and fire his employees and held that Regula- tions or Rules made under a Statute apply uniformly to everyone or to all members of the same group or class. They impose obligations on the statutory

authorities who cannot deviate from the conditions of service and any deviation will be enforced through legal sanction of declaration by Courts to invalidate the actions in violation of the Rules or Regulations. The statutory bodies have no free hand in framing the terms or conditions of service of their employ- ees. The Regulations bind both the authorities and also the public. The powers of the statutory bodies are derived, controlled and restricted by the Statutes which create them and the Rules and Regulations framed thereunder. The Stat- ute, thereby fetters on the freedom of contract. Accordingly declaration was granted that dismissal or removal of an employee by statutory Corporation in contravention of statu- tory provision as void. Mathew, J. in a separate but concurrent judgment held that a Public Corporation being the creation of a Statute is subject to statutory limitations as a State itself. The preconditions of this Part II viz., that the corporation is created by Statute and the existence of power in the corporation is to invade a statutory right of the individual. Therefore, the governing power must be subject to fundamental statutory limitations. The need to subject the power centres to the control of the Constitution requires an expansion of concept of State action. The duty of State is affirmative duty seeing that all essentials of life are made available to all persons. The task of State today is to make the achievement of good life both by remov- ing obstacles in the path of such achievement and by assist- ing individual in realising his ideal of self-perfection. The employment under public corporation is a public employment and, therefore, the employee should have the protection which appurtains to public employment. (emphasis supplied).

The Court must, therefore, adopt the attitude that declara- tion is a normal remedy for a wrongful dismissal in case of public employees which can be refused in exceptional circum- stances. The remedy of declaration should be a remedy made an instrument to provide reinstatement in public sector. This principle was extended to numerous instances where the termination of services of the employees of a statutory corporation was affected in violation of the principles of natural justice or in transgression of the statutory rules etc. In U.P. State Warehousing Corporation v. N.V. Vajpayee, [1980] 2 SCR 737 at p 780 F to G and 783G to 784A this Court held that statutory body cannot terminate the services of its employees without due enquiry held in accordance with the principles of natural justice. The persons in public employment are entitled to the protection of Articles 14 and 16 of the Constitution, when the service was arbitrarily terminated. The question, therefore, is whether the statuto- ry corporations are entitled to be invested with absolute freedom to terminate the services of its employees in terms of the contract of service.

7. In Ramana v. International Airport Authority of India, [1979] 3 SCR. 1014 = (1979) SC. p. 1628 this Court held that expression of welfare and social service functions necessitates the State to assume control over natural and economic resources and large scale natural and commercial activities. For the attainment of socio-economic justice, there is vast and notable increase of frequency with which ordinary citizens come into relationship of direct encoun- ters with the State. The Government in a welfare state is the regulator and dispenser of social services and provider of large number of benefits, including jobs etc. Thousands of people are employed in Central/State Government Services and also under local authorities. The Government, therefore, cannot act arbitrarily. It does not stand in the same posi- tion as a private individual. In a democratic Government by rule of law, the executive Government or any of its officers cannot held to be possessed of arbitrary power over the interests of the individuals. Every action of the Government must be informed with reason and should be free from arbi- trariness. That is the very essence of rule of law. It was further held:

"It was, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts ..... the Government cannot act

arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard of norm which, is not arbitrary, irrational or irrelevant. The power of discretion of the Government in the matter of grant of largess including award of jobs, ... must be conditioned and structured by rational relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action or the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

This statement of law, though was made in the context of contractual relations, it is a general law with width and amplitude which permeates the entire spectrum of actions, legislative as well as executive.

8. The Constitution is the permanent law of the land and its preamble is an integral part thereof. It assures Social and Economic Justice and also accords equality of opportuni- ty and status as well as equality before law assuring digni- ty of the individual. The Constitution Forty Second Amendment Act introduced "Socialism" in the Preamble and made explicit of what is latent in the Constitutional Scheme. Article 14 accords equal protection of law and equality before law. Article 16(1) provides right to an appointment or employment to an office or post under the State. Article 19(1)(g) assures right to occupation or avocation. Art. 21 assures right to life and any deprivation is as per the procedure established by law. In General Manager, Southern Railway v. Rangachari, [1962] S.C.R. page 586 it was held that matters relating to employment would include salary, increments, leave, gratuity, pension, age of superannuation etc. Similarly, in respect of appointments, such matters would include all the terms and conditions of service per- taining to the said office. All those matters are included in the expression "matters relating to employment or appointment" within the meaning of Art. 16(1) of the Constitu- tion. This was reiterated in State of M.P.v. Shardul Singh, [19701 3 S.C.R. page 302 at 305--306 that conditions of service include holding of posts right from the time of appointment till his retirement beyond it like pension etc. The middle class, lower middle class and lower classes' educated youths generally, if not mainly,- depend on employment or appointment to an office or posts under the States which include corporations, statutory body or instrumentality under Art. 12 of the Constitution as source to their liveli- hood and means to improve their intellectual excellence and liner facets of life individually and collectively as a member of the society so that himself and his dependents are economically sound, educationally advanced and socially dignified so that the nation constantly rises to standards of higher level in an egalitarian social order under rule of law as is obligated under Art. 51A(J).

Right to life scope of

9. The right to life, a basic human right assured by Art. 21 of the Constitution comprehends something more than mere animal existence i.e. dignity of the individual. Field J. in Munn v. Illinois, [1876] 94 US 113 and 154 held that by the term "life" as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The deprivation not only of life but of ..... if it a efficacy be not lettered away by Judicial decision. In Kharak Singh v. State of U.P., [1964] 1 SCR 332 this Court approved the definition of life given by Field J. in his dissenting opinion. In Olga Tellis v. Bombay Munici- pal Corporation, [1985] 2 Suppl. SCR page 51 at 79 this Court further laid that an equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the

Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of live- lihood to the point of abrogation ..... That, which alone can make it possible to live, leave aside which makes life liveable, must be deemed to be an integral component of the right to life ..... The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is the struggle for life. So unimpeachable is the nexus between life and the means of livelihood. Right to life does not only mean physicaI existence but includes basic human dignity, vide Menaka Gandhi v. Union of India, [1978] 2 SCR 621 John Stuart Mill in his 'Consideration of Representative Govt.' said years ago that "the power of the State is to promote virtue and intelli- gence of the people". In State of Maharashtra v. Chunder Bhan, [1983] 3 SCR 387 = AIR 1983 SC 803 Chinnappa Reddy, J. held that public employment opportunity is a national wealth in which all citizens are equally entitled to share and Varadarajan, J. held that public employment is the property of the nation which has to be shared equally. This rule was laid when rule 15(1)(ii)(b') of B.C.S. Rules to pay subsistence allowance during period of suspension @ Rs. 1 per month pending departmental enquiry was challenged and declared the rule as ultra vires by operation of Arts. 14, 16, 21 and 311(2).

The right to public employment and its concomitant right to livelihood, thus, receive their succour and nourishment under the canopy of the protective umbrella of Arts. 14, 16(1), 19(1)(g) and 21. Could statutory law arbitrarily take away or abridged or abrogated it? In Board of Trustees, Port of Bombay v. Dilip Kumar, [1983] 1 SCR 828 = AIR 1983 SC 109 this Court held that the expression "life" does not merely connote animal existence or a continued drudgery through life, the expression life has a much wider meaning. Where, therefore, the, outcome of a departmental enquiry is likely to affect reputation or livelihood of a person, some of the liner graces of human civilisation which makes life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedure. In Workmen of Hindustan Steels Ltd. v. Hindustan Steel Ltd. & Ors., [1985] 2 SCR 428 it was held that the standing order 31 which confers arbitrary, uncanalised and drastic power on the Manager to dismiss an employee without enquiry, apart from being in violation of basic requirement of natu- ral justice, is such a drastic nature as to effect the livelihood and put a stigma on the character of the workman. In Francis Corallie v. U.T. of Delhi, [1981] 2 SCR 516 = AIR 1981 SC 746 this Court held that "it is for the Court to decide, in exercise of its constitutional power of judicial review, whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just and fair treatment". The tests of reason and jus- tice cannot be abstract nor can be divorced from the actual- ities of life and the needs of the Society. The tests ap- plied must be pragmatic and purposive lest they cease to be reasonable. Reasonableness must be meaningful and effica- cious in content as well as in form. The procedure provided in Rule 9(b) or allied rules, therefore, must not be just, fair and reasonable so as to be in conformity with Arts. 14 and 21 is the cry of the case.

10. The position of the public employee is whether status: The distinguishing feature of public employment is status. In Roshanlal Tandon v. Union of India, [1968] 1 SCR 185 at 195-196 the Constitution Bench held that the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by, the public law and not by mere agreement of the parties. The employment of the Government servant and his terms of service are governed by statute or statutory rules. Once he is appointed to the post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by Statute or Statutory Rules. The relationship between the Government and its servants is not like an ordinary contract of service between a master and servant. The legal relationship is in the nature of status. The duties of statute

are fixed by the law and in the enforce- ment of the duties society has an interest. Status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agree- ment between the parties concerned. In Calcutta Dock Labour Board v. Jarfar Imam, [1965] 3 SCR 463 it was held that the statutory scheme of employment confers on the worker a status. An unlawful act is an interference with status. This view was followed in Sirsi Municipality v. Cecelia Kom Francis Tellis, [1973] 3 SCR 348 Beg, J. (as he then was) held that the principles applicable to the relation of a Private Master and servant unregulated by statute, could not apply to the cases of a public statutory body exercising powers of punishment lettered or limited by statute and relevant rules of procedure. This Court in a recent decision extended all the benefits of pay scales to all the Central Government Corporate Sector employees. It is, thus, I hold that the employees of the corporations, statutory authority or instrumentality under Art. 12 have statutory status as a member of its employees. The rights and obligations are governed by the relevant statutory provisions and the em- ployer and employee are equally bound by that statutory provisions.

11. Nature of the right of a permanent employee to a post In Purushottam Lal Dhingra v. Union of India, [1958] SCR 828 at 84 1-843 it was held that the appointment to a perma- nent post may be substantive or on probation or on officiat- ing basis. A substantive appointment to a permanent post in a public service confers normally substantive right to the post and he becomes entitled to hold a lien on the post. He is entitled to continue in office till he attains the age of superannuation as per rules or is dismissed or removed from service for inefficiency, misconduct or negligence or any other disqualification in accordance with the procedure prescribed in the rules, and fair and reasonable opportunity of being heard or on compulsory retirement or in certain circumstances, subject to the conditions like re-employment on abolition of post. In Motiram Daka v. General Manager, [1964] 5 SCR 683 at 718-721=AIR 1964 SC 600 at 608 & 609 majority of seven Judges' Bench held that a permanent post carries a definite rate of pay without a limit of time and a servant who substantively holds a permanent post has a title to hold the post to which he is substantively appointed, and that in terms, means that a permanent servant has a right to hold the post until, of course, he reaches superannuation or until he is compulsorily retired under the relevant rule. If for any other reason that right is invaded and he is asked to leave the service the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of penalty and amounts to removal. In other words, termination of service of a permanent servant, otherwise than on superannuation of compulsory retirement, must per se amount to his removal and so, by Rule 148(3) or Rule 149(3) of Rly. Establishment Rules if such a termination is brought about, the rule clearly contravenes Art. 311(2) and must be held to be invalid. A permanent employment assures security of tenure which is essential for the efficiency and incorruptibility of public administration. In Guruder Singh Sidhu v. State of Pepsu, [1964] 7 SCR 587 =AIR 1964 SC 1585 another Constitu- tion Bench held that for efficient administration of the State, it is absolutely essential that permanent public servant should enjoy a sense of security of tenure. The safeguard which Art. 311(2) affords is no more than this that in case it is intended to dismiss or remove or reduce them in rank, a reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them. In Motiram Daka's case (supra) it was further held that in a modern democratic State, the efficiency and incorruptibility of public administration is of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. If a permanent civil servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject, of course, to the safeguard prescribed by Art. 311(2); but in regard to honest, straight-forward and effi- cient permanent civil servants, it is of utmost importance, even from the point of view of the State, that

they should enjoy a sense of security which alone can make them inde- pendent and truly efficient. The sword of damocles hanging over the heads of permanent railway servants in the form of Rule 148(3) or Rule 149(3) would inevitably create a sense of insecurity in the minds of such servants and would invest appropriate authorities with very wide powers which may conceivably be abused. Thereby this Court laid emphasis that a permanent employee has a right or lien on the post he holds until his tenure of service reaches superannuation so as to earn pension at the evening of his life unless it is determined as per law. An assurance of security of service to a public employee is an essential requisite for efficiency and incor- ruptibility of public administration. It is also an assur- ance to take independent drive and initiative in the dis- charge of the public duties to alongate the goals of social justice set down in the Constitution.

This Court in Daily Rated Casual Labour v. Union of India, [1988] 1 SCR 598--[1988] 1 SCC 122 at 130-131 further held that the right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment etc., and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extend- ed simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of most importance. If a person does not have the feeling that he belongs to an organisation engaged in pro- duction he will not put forward his best effort to produce more. (emphasis supplied) That sense of belonging arises only when he feels that he will not be turned out of employ- ment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contrib- ute to the maximisation of production.

12. It must, therefore, be held that a permanent employ- ee of a statutory authority, corporation or instrumentality under Art. 12 has a lien on the post till he attains super- annuation or compulsorily retired or service is duly termi- nated in accordance with the procedure established by law. Security of tenure ensures the benefit of pension on retire- ment. Dismissal, removal or termination of his/her service for inefficiency, corruption or other misconduct is by way of penalty. He/ she has a right to security of tenure which is essential to inculcate a sense of belonging to the serv- ice or organisation and involvement for maximum production or efficient service. It is also a valuable right which is to be duly put an end to only as per valid law.

13. How to angulate the effect of termination of service Law is a social engineering to remove the existing irabal- ance and to further the progress, serving the needs of the Socialist Democratic Bharat under rule of law. The prevailing social conditions and actualities of life are to be taken into account to adjudging whether the impugned legislation would subserve the purpose of the society. The arbitrary, unbrid- dled and naked power of wide discretion to dismiss a perma- nent employee without any guidelines or procedure would tend to defeat the constitutional purpose of equality and allied purposes referred to above. Courts would take note of actu- alities of life that persons actuated to corrupt practices are capable, to maneuver with higher echolons in diverse ways and also camouflage their activities by becoming syco- phants or chronies to the superior officers. Sincere, honest and devoted subordinate officer unlikely to lick the boots of the corrupt superior officer. They develop a sense of self-pride for their honesty, integrity and apathy and inertia towards the corrupt and tent to undermine or show signs of disrespect or disregard towards them. Thereby, they

not only become inconvenient to the corrupt officer but also stand an impediment to the on-going smooth sipbony of cor- ruption at a grave risk to their prospects in career or even to their tenure of office. The term efficiency is an elusive and relative one to the adept capable to be applied in diverse circumstances. if a superior officer develops likes towards sycophant, tough corrupt, he would tolerate him and found him to be efficient and pay encomiums and corruption in such eases stand no impediment. When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential with delightfully vague language imputing to be 'not upto the mark', 'wanting public relations' etc. Yet times they may be termed to be "security risk" (to their activities). Thus they spoil the career of the honest, sincere and devoted officers. In- stances either way are gallore in this regard. Therefore, one would be circumspect, pragmatic and realistic to these actualities of life while angulating constitutional validity of wide arbitrary, uncanalised and unbriddled discretionary power of dismissal vested in an appropriate authority either by a statute or a statutory rule. Vesting arbitrary power would be a feeding ground for nepotism and insolence; in- stead of subserving the constitutional purpose, it would defeat the very object, in particular, when the tribe of officers of honesty, integrity and devotion are struggling under despondence to continue to maintain honesty, integrity and devotion to the duty, in particular, when moral values and ethical standards are fast corroding in all walks of life including public services as well. It is but the need and imperative of the society to pat on the back of those band of honest, hard-working officers of integrity and devotion to duty. It is the society's interest to accord such officers security of service and avenues of promotion.

That apart, the haunting fear of dismissal from service at the vagary of the concerned officer would dry up all springs of idealism of the employee and in the process coarsens the conscience and degrades his spirit. The nobler impulses of minds and the higher values of life would not co-exist with fear. When fear haunts a man, happiness van- ishes. Where fear is, justice cannot be, where fear is, freedom cannot be. There is always a carving in the human for satisfaction of the needs of the spirit, by arming by certain freedom for some basic values without which life is not worth- living. It is only when the satisfaction of the physical needs and the demands of the spirit coexists, there will be true efflorescence of the human personality and the free exercise of individual faculties. Therefore, when the Constitution assures dignity of the individual and the right to livelihood the exercise of the power by the executive should be cushioned with adequate safeguards for the rights of the employees against any arbitrary and capracicous use of those powers.

Contract of service must be consistent with the Constitu- tion.

14. From the above perspective vis-a-vis constitutional, social goals and rights of the citizens assured in the preamble, Parts III & IV i.e. the trinity, the question whether the statutory corporation or the instrumentality or the authority under Art. 12 of the Constitution is validly empowered to terminate the services of a permanent employee in terms of the contract of employment or rules without conducting an enquiry or an opportunity of show cause of proposed order of termination of the service. The Indian Contract Act, 1872 operating in British India was extended to the merged States in 1949 & 1950 except to the State of Jammu & Kashmir. Therefore, after Bharat attained independ- ence on August 15, 1947, the Indian Contract Act is applica- ble to all States except Jammu & Kashmir. By operation of Article 372 of the Constitution, the Indian Contract Act continues to be in operation subject to the provisions of the Constitution. The Indian Contract Act is an amending as well as consolidating Act as held in Ramdas Vithaldas Durbar v.S. Amerchand & Co., 43 Indian Appeals 164. Thereby common law principles applicable in England, if they are inconsist- ent with or derogation to the provisions of the Indian Contract Act or the Constitution to

that extent they stand excluded. Any law, muchless the provisions of Contract Act, are inconsistent with the fundamental rights which guaran- teed in Part III of the Constitution, by operation of Articles 13 of the Constitution, are void. Section 2(h) of the Indian Contract Act defines "an agreement" including an agreement of service and becomes a Contract only when it is enforceable by law. If it is not enforceable it would be void by reason of section 2(g) thereof. The question, therefore, is whether the contract of service or Regulation 9(b) in derogation to the Fundamental Rights guaranteed in Part III of the Consti- tution is valid in law and would be enforceable. Contract whether changeable with changing times.

15. The law of contract, like the legal system itself, involves a balance between competing sets of values. Freedom of contract emphasises the need of stability, certainty and predictability. But, important as is values are, they are not absolute, and there comes a point where they "face a serious challenge" against them must be set the values of protecting the weak, oppressed and the thoughtless from imposition and oppressed. Naturally, at a particular time, one set of value tends to be emphasised at the expense of the other as the time changes the values get changed and the old values are under replacement and new values take their due place. Though certainty and predictability in ordinary commercial contract law is emphasised and insisted upon the need for progress of the society and to removing the disa- bilities faced by the citizens and their relations when encounter with the State or its instrumentalities are in conflict with the assured constitutional rights demand new values and begin to assert themselves, for no civilised system of law can accept the implications of absolute sanc- tity of contractual obligations and of their immutability. In paragraph 4 of Chitty on Contracts (25th Edition, Volume-I) it is stated that "freedom of contract is a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed and no injury is done to the economic interest of the commu- nity at large.

In Anson's Law of Contract at p. 6 & 7 stated the scope of freedom of contract in the changing circumstances thus: "Today the position is seen in a very different light. Freedom of contract is a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the econom- ic interests of the community at large. In the more compli- cated social and industrial conditions of a collectivist society it has ceased to have much idealistic attraction. It is now realised that economic equality often does not exists in any real sense, and that individual interests have to be made to subserve those of the community hence there has been a fundamental change both in our social outlook and in the policy of the legislature towards contract and the law today interferes at numerous points with the freedom of the par- ties to make what contract they like. The relation between employers and employed, for example, have been regulated by statutes designed to ensure that the employees condition of work are safe, that he is properly protected against redun- dancy and that he knows his terms of service. The public has been protected against economic pressure by such measures as the Rent Acts, the supply of goods (implied terms) at, the consumer Credit Act and other similar enactments. These legislative provisions will override any contrary terms which the parties may make for themselves. Further, the legislature has intervened in the Restrictive Trade Practice Act 1956 and the Fair Trading Act, 1973 to promote competi- tion in industry and to safeguard the interests of consum- ers. This intervention is specially necessary today when most contracts entered by ordinary people are not the result of individual negotiation. It is not possible for a private person to settle the terms of his agreement with a British Railways Board or with a local electricity authority. The standard form' contract is the rule. He must either accept the terms of this contract in toto, or go without. Since, however, it is not feasible to deprive onself of such necessary services, the individual is compelled to accept on those terms. In view of this fact, it is quite clear that freedom of contract is now largely an illusion.

16. The trinity of the Constitution assure to every citizen Social and Economic Justice, Equality of Status and of opportunity with dignity of the person. The State is to strive to minimise the inequality in income and eliminate inequality in status between individuals or groups of peo- ple. The State has intervened with the freedom of contract and interposed by making statutory law like Rent Acts, Debt Relief Acts, Tenancy Acts, Social Welfare and Industrial Laws and Statutory Rules prescribing conditions of service and a host of other laws. All these Acts and Rules are made to further the social solidarity and as a step towards establishing an egalitaran socialist order. This Court, as a court of constitutional conscience enjoined and a jealously to project and uphold new values in establishing the egali- tarian social order. As a court of constitutional function- ary exercising equity jurisdiction, this Court would relieve the weaker parties from unconstitutional contractual obligations, unjust, unfair, oppressive and unconscienable rules or conditions when the citizen is really unable to meet on equal terms with the State. It is to find whether the citizen, when entered into contracts or service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position of either to "take it or leave it" and if it finds to be so, this Court would not shirk to avoid the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial contract law, it is not an absolute and immutable one but is subject to change in the changing social condi- tions.

17. In Brojonath's case, Madan, J., elaborately consid- ered the development of law relating to unfair or unreasona- ble terms of the contract or clauses thereof in extenso and it is unnecessary for me to traverse the same grounds once over. The learned Judge also considered the arbitrary, unfair and unbridled power on the envil of distributive justice or justness or fairness of the procedure envisaged therein. The relevant case law in that regard was dealt with in extenso in the light of the development of law in the Supreme Court of United States of America and the House of Lords in England and in the continental countries. To avoid needless burden on the judgment, I do not repeat the same reasoning. I entirely agree with the reasoning and the conclusions reached therein on all these aspects. Whether State can impose unconstitutional Conditions.

18. The problem also would be broached from the angle whether the State can impose unconstitutional conditions as part of the contract or statute or rule etc. In 1959-60 73 Harvard Law Review, in the Note under the Caption 'Unconsti- tutional Condition' at page 1595-96 it is postulated that the State is devoid of power to impose unconstitutional conditions in the contract that the power to withhold lar- gess has been asserted by the State in four areas i.e., (1) regulating the right to engage in certain activities; (2) Administration of Government welfare programme; (3) Govern- ment employment; and (4) Procurement of contracts. It was further adumberated at pages 1602-1603 thus:

"The sovereign's constitutional authority to choose those with whom it will contract for goods and services is in effect a power to withhold the benefits to be deprived from economic dealings with the government. As government activity in the economic sphere increases, the contracting power enables the government to control many hitherto unreg- ulated activities of contracting parties through the imposi- tion of conditions. Thus, regarding the government as a private entrepreneur threatens to impair constitutional rights ..... The Government, unlike a private individual, is limited in its ability to contract by the Constitution. The federal contracting power is based upon the Constitu- tion's authorisation of these acts 'necessary and proper' to the carrying out of the functions which it allocates to the national government,--Unless the objectives sought by terms and conditions in government contracts requiring the surren- der of rights are constitutionally authorised, the condi-

tions must fall as ultra vires exercise of power." Again at page 1603, it is further emphasised thus: "When conditions limit the economic benefits to be derived from dealings with the government to those who forego the exercise of constitutional rights, the exclusion of those retaining their rights from participation in the enjoyment of these benefits may be a violative of the prohibition, implicit in the due process clause of fifth amendment and explicit in the equal protection clause of the fourteenth amendment against unreasonable discrimination in the Govern- mental bestow of advantages. Finally, disabling those exer- cising certain rights from participating in the advantages to be derived from contractual relations with the government may be a form of penalty lacking in due process. To avoid invalidation for any of the above reasons, it must be shown that the conditions imposed are necessary to secure the legitimate objectives of the contract ensure its effective use, or protect society from the potential harm which may result from the contractual relationship between the govern- ment and the individual.

19. Professor Guido Calabresi of Yale University Law School in his "Retroactivity, Paramount power and Contractu- al Changes" (196 1-62) 71 Yale Law Journal P. 119 1 at 1196) stated that the Government can make contracts that are necessary and proper for carrying out any of the specific clauses of the Constitution or power to spend for general welfare. The Federal Government has no power, inherent or sovereign, other than those specifically or explicitly granted to it by the Constitution. At page 1197, it is further stated thus: "The Government acts according to due process standards for the due process clause is quite up to that task without the rule. Alterations of Government contracts are not desirable in a free country even when they do not constitute a 'tak- ing' of property or impinge on questions of fundamental fairness of the type comprehended in due process. The gov- ernment may make changes, but only if war or commerce re- quire them and not on the broader and more ephemeral grounds that the general welfare would be served by the change. Any other rule would allow the Government to which almost at will."

20. These principles were accepted and followed by the Andhra Pradesh High Court in V. Raghunadha Rao v. State of Andhra Pradesh, [1988] 2 A.L.T. 461 dealing with A.P. Stand- ard specification Clauses 11, 29, 59, 62(b) and 73 and declared some clauses to be ultra vires of Articles 14, 19(1)(g) and 21 of the Constitution and Sections 23 and 27 of the Contract Act.

21. In Brojonath's case (supra) after elaborate consid- eration of the doctrine of "reasonableness or fairness" of the terms and conditions of the contract vis-a-vis the relative bargaining power of the contracting parties this Court laid down that the principles deductable from the discussion made therein is in consonance with right or reason intended to secure socio-economic justice and con- forms to mandate of the equality clause in Article 14. The principle laid was that courts will not enforce and will, when called upon to do so, strike down an unfair and unrea- sonable contact or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power ..... It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscienable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal or where both parties are businessmen and the contract is a commercial transaction.

22. In today's complex world of giant corporations with their vast infra-structural organisations and

with the State through its instrumentalities and agencies has been entering into almost every branch of industry and commerce and field of service, there can be myriad situations which result in unfair and unreasonable bargains between parties possess wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circum- stances.

Public policy whether changeable.

23. This Court also angulated the question from the perspective of public policy or contract being opposed to public policy. The phrases "public policy", "opposed to public policy", or "contrary to public policy" are incapable of precise definition. It is valued to meet the public good or the public interest. What is public good or in the public interest or what would be injurious or harmful to the public good or the public interest vary from time to time with the change of the circumstances. New concepts take place of old one. The transactions which were considered at one time as against public policy were held by the courts to be in public interest and were found to be enforceable. Therefore, this Court held in Brojonath's case that "there has been no well-recognised head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public."

Lord Wright in his legal Essays and Addresses Vol. III p. 76 and 78 stated that public policy like any other branch of the common law ought to be and I think is, governed by the judicial use of precedents ..... If it is said that rules of public policy have to be moulded to suit new condi- tions of a changing world, that is true, but the same is true with the principles of the cannon law generally; Lord Lindley held in Janson v. Driefontein Mines Ltd., [1902] A.C.p. 484 and 507 that "a contract or other branch which is against public policy i.e. against the general interest of the country is illegal."

24. In Anson's Law of Contract, 24th Edition by A.G. Guest at p.. 335 stated the scope of variability of public policy attune to the needs of the day and the march of law thus:

"At the present time, however, there is an increasing recog- nition of the positive function of the Courts in matters of public policy: 'The law relating to public policy cannot remain immutable. It must change with the passage of time. The wind of change blows upon it'. Some aspects of public policy are more susceptible to change than others, during the policy of the law has, on certain subjects, been worked into a set of tolerably definite rules. The principles applicable to agreements in restraint of trade, for example, have on a number of occasions been modified or extended to accord with prevailing economic conditions, and this process still continues.

In law of Contract by G.H. Treitei, 7th Edition at p, 366 on the topic 'scope of the public policy' it is stated thus:

"Public policy is a variable notion, depending on changing manners, morals and economic conditions. In theory, this flexibility of the doctrine of public policy could provide a judge with an excuse for invalidating any contract which he violently disliked. On the other hand, the law does adapt itself to change in economic and social conditions, as can be seen particularly from the development of the rules as to contracts in restraint of public policy has often been recognised judicially. Thus Lord Haldane has said; "What the law recognises as contrary to public policy turns out to vary greatly from time to time." And Lord Denning has put a similar point of view. "with a

good man in the saddle, the unruly horse can be kept in control. It can jump over obsta- cles." The present attitude of the Courts represents a compromise between the flexibility inherent in the notion of public policy and the need for certainty in commercial affairs."

25. From this perspective, it must be held that in the absence of specific head of public policy which covers a case, then the court must in consonance with public con- science and in keeping with public good and public interest invent new public policy and declare such practice or rules that are derogatory to the constitution to be opposed to public policy. The rules which stem from the public policy must of necessity be laid to further the progress of the society in particular when social change is to bring about an egalitarian social order through rule of law. In deciding a case which may not be covered by authority courts have before them the beacon light of the trinity of the Constitu- tion and the play of legal light and shade must lead on the path of justice social, economical and political. Lacking precedent, the court can always be guided by that light and the guidance thus shed by the trinity of our Constitution.

Public policy can be drawn from the Constitution.

26. Sutherland, in his Statutes and Statutory Construc- tion Third Edition Vol. 3 paragraph 5904 at page 13 1-132 has stated that the most reliable source of public policy is to be found in the federal and state constitutions. Since constitutions are the superior law of the land, and because one of their outstanding features is flexibility and capaci- ty to meet changing conditions, constitutional policy pro- vides a valuable aid in determining the legitimate bound- aries of statutory meaning. Thus public policy having its inception in constitutions may accomplish either a restrict- ed or extended interpretation of the literal expression a statute. A statute is always presumed to be constitu- tional and where necessary a constitutional meaning will be inferred to preserve validity. Likewise, where a statute tends to extend or preserve a constitutional principle, reference to analogous constitutional provisions may be of great value in shaping the statute to accord with the statu- tory aim or objective.

Article 14 sheds the light to public policy to curb arbi- trariness.

26A. In Basheshar Nath v. The Commissioner of Income-Tax & Anr., [1959] Suppl. 1 SCR 528 S.R. Das, CJ., held that Article 14 is founded on a sound public policy recognised and valued in all States and it admonishes the State when it disregards the obligations imposed upon the State. 26B. In E.P. Royappa v. State of Tamil Nadu & Ant., [1974] 2 SCR 348 Bhagwati. J. (as he then was) held that Article 14 is the genus while Article 16 is a specie. Arti- cle 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which. therefore, informs both Articles 14 and 16 is equali- ty and inhibition against discrimination. "Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view. equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and ca- price of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relat- ing to public employment, it is also violative of Article

16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. In Menaka Gandhi's case it was further held that the principle of reasonableness, which

legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. In Rama- na's case it was held that it is merely a judicial formula for determining whether the legislative or. executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions namely, rational rela- tion and nexus the impugned legislative or executive action would plainly be arbitrary and the guarantees of equality under Article 14 would be breached. Wherever, therefore, there is arbitrariness in State action whether it be of legislature or of the executive or of an "authority" under Article 12, Article 14, "immediately springs into action and strikes down such State action." In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the constitution.

27. In Volga Tellies'Case it was held that the Constitu- tion is not only paramount law of the land but also it is a source of sustenance of all laws. Its provisions are con- ceived in public interest and are intended to serve public purpose. Therefore, when the provisions of an Act or Regula- tions or Rules are assailed as arbitrary, unjust, unreasona- ble, unconstitutional, public law element makes it incumbent to consider the validity there'of on the envil of inter play of Arts. 14', 16(1), 19(1)(g) and 21 and of the inevitable effect of the impugned provision on the rights of a citizen and to find whether they are constitutionally valid. Interplay of Arts. 14, 16(1), 19(1)(g) & 21 as guarantors of public employment as a source of right to livelihood.

28. It is well settled constitutional law that different Articles in the Chapter on Fundamental Rights and the Direc- tive Principles in Part IV of the Constitution must be read as an integral and incorporeal whole with possible overlap- ping with the subject-matter of what is to be protected by its various provisions particularly the Fundamental Rights. By the Full Court in R.C. Cooper v. Union of India, [1970] 3 SCR 530 it was held that the law must not impair the guarantee of any of the fundamental rights in Part-III. The law authorising to impose reasonable restrictions under Article 19(1) must be intended to advance the larger public interest. Under the Constitution, protection against impairment of the guarantee of the fundamental rights is determined by the nature of the right, interest of the aggrieved party and the degree of harm resulting from the state action. Impairment of the right of the individual and not the object of the State in taking the impugned action is the measure of protection. To concentrate merely on the power of the State and the object of the State action in exercising that power is, therefore, to ignore the true intent of the constitution. The nature and content of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual but by its objects. The validity of the State action must be adjudged in the light of its opera- tion upon the rights of the individuals or groups of the individual in all their dimensions. It is not the object of the authority making the law imparing the right of the citizen nor the form of action taken that determines the protection he can claim; it is the effect of the law and of the action upon the right which attract the jurisdiction of the court to grant relief. In Minerva Mills Ltd. v. Union of India, [1981] 1 SCR 206 the fundamental rights and directive principles are held to be the conscience of the Constitution and disregard of either would upset the equibalance built up therein. In Menaka Gandhi's case, it was held that different articles in the chapter of Fundamental Rights of the Consti- tution must be read as an. integral whole, with possible overlapping of the subject matter of what is sought to be protected by its various provisions particularly by articles relating to fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and

opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. The fundamental rights protected by Part III of the constitution, out of which Articles 14, 19 and 21 are the most frequently invoked to test the validity of executive as well as legislative actions when these actions are subjected to judicial scrutiny. Fundamental Rights are necessary means to develop one's own personality and to carve out one's own life in the manner one likes best, subject to reasonable restrictions imposed in the paramount interest of the Society and to a just, fair and reasonable procedure. The effect of restriction or deprivation and not of the form adopted to deprive the right is the conclusive test. It is already seen that the right to a public employment is a constitutional right under Art. 16(1). All matters relating to employment include the right to continue in service till the employee reaches superannuation or his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution or the Rules made under proviso to Article 309 of the Constitution or the statutory provision or the Rules, regulations or instructions having statutory flavour made thereunder, But the relevant provisions must be conformable to the rights guaranteed in Parts III & IV of the Constitution, Article 21 guarantees the_ right to live which in- cludes right to livelihood, to a many the assured tenure of service is the source, the deprivation thereof must be in accordance with the procedure prescribed by law conformable to the mandates of Articles 14 and 21 as be fair, just and reasonable but not fancyful oppressive or at vagary. The need for the fairness, justness or reason ableness of the procedure was elaborately considered in Menaka Gandhi's case (supra) and it hardly needs reiteration.

Principles of natural justice in Part of Article 14.

29. The Menaka Gandhi's case is also an authority for the proposition that the principles of natural justice is an integral part of the guarantee of equality assured by Arti- cle 14 of the Constitution. In Union of India & Anr. v. Tulsiram Patel & Ors., [1985] Suppl. 2 SCR 13 1 at 233, this Court held that the principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equali- ty which is the subject-matter of that Article. Shortly put, the syllogism runs thus:

"Violation of a rule of natural justice results in arbi- trariness which is the same as discrimination; where dis- crimination is the result of the State action, it is a violation of Art. 14, therefore, a violation of a principle of natural justice by a State action is a violation of Art-

14. Article 14, however; is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to the legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'State' in Art. 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such a matter fairly and impartially."

In Moti Ram Deka's case this Court already held that "the rule making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Art. 311(2). Article 311(2) is intended to afford a sense of scrutiny to public servants who are substantively appointed to a permanent post and one of the principle benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension to which a servant substantively appointed to a permanent post is entitled can be curtailed

by Rules framed under Art. 309 so as to make the said right either ineffec- tive or illusory. Once the scope of Art. 311(1) and (2) is duly determined, it must be held that no rule framed under Art. 309 can trespass on the rights guaranteed by Art. 311. This position is of basic importance and must be borne in mind in dealing with the controversy in question.

30. In A.K. Kraipak & Ors etc. v. Union of India & Ors., [1970] 1 SCR 457 this Court held that Rules of natural justice aims at securing justice or to prevent injustice. They operate only in the areas not covered by any law valid- ly made. In Union of India v. Col. J.N. Sinha and Anr., [197 1] 1 SCR 791 it was held that principles of natural justice do not supplant the law but supplement it. If a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision of the principles of natural justice. In that case this Court held that principles of natural justice cannot be read into Fundamental Rule and no opportunity need be given before compulsorily retiring an employee as that implication does not arise by reason of express statutory language.

31. The principle of natural justice embodied as an integral part of equality clause. Article 14 is the general principle while Art. 311(2) is a special provision applica- ble to all civil services under the State. Article 311(2) embodies the principles of natural justice but proviso to Clause (2) of Art. 311 excludes the operation of principles of natural justice engrafted in Art. 311(2) as an exception in the given circumstances enumerated in three clauses of the proviso to Art. 311(2) of the Constitution. Article 14 read with Arts. 16(1) and 311 are to be harmoniously inter- preted that the proviso to Art. 311(2) excludes the applica- tion of the principles of natural justice as an exception; and the applicability of Art. 311(2) must, therefore, be circumscribed to the civil services and to be construed accordingly. In respect of all other employees covered by Art. 12 of the Constitution the dynamic role of Art. 14 and other relevant Articles like 21 must be allowed to have full play without any inhibition, unless the statutory rules themselves, consistent with the mandate of Arts. 14, 16, 19 & 21 provide, expressly such an exception. Article 19(1)(g) empowers every citizen right to avoca- tion or profession etc., which includes right to be contin- ued in employment under the State unless the tenure is validly terminated consistent with the scheme enshrined in the fundamental rights of the Constitution. Therefore, if any procedure is provided for deprivation of the right to employment or right to the continued employment till the age of superannuation as is a source to right to livelihood, such a procedure must be just, fair and reasonable. This Court in Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. v. Union of India & Ors., [1981] 2 SCR 52 at 60-61 held that Art. 19(1)(g) confers a broad and general right which is available to all persons to do works of any partic- ular kind and of their choice. Therefore, whenever there is arbitrariness in state action--whether it be of the legisla- ture or of the Executive or of an authority under Art. 12, Arts. 14 and 21 spring into action and strikes down such an action. The concept of reasonableness and nonarbitrariness pervades the entire constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitu- tion. Therefore, the provision of the statute, the regula- tion or the rule which empowers an employer to terminate the services of an employee whose service is of an indefinite period till he attains the age of superannuation, by serving a notice of pay in lieu thereof must be conformable to the mandates of Arts. 14, 19(1)(g) and 21 of the Constitution. Otherwise per se it would be void. In Motiram Deka's case, Gajendragadkhar, J-, (as he then was) after invalidating the rules 149(3) and 148(3) under Art. 311(2) which impari materia Rule 9(b) of the Regulation also considered their validity in the light of Art. 14 and held thus: "Therefore, we are satisfied that the challenge to the validity of the impugned Rules on the ground that they contravene Art. 14 must also succeed."

This was on the test of reasonable classification as the principle then was applied. Subba Rao, J., (as he then was) in a separate but concurrent judgment, apart from. invali- dating the rule under Article 311(2) also held that the Rule infringed Article 14 as well, though there is no elaborate discussion in that regard. But, Das Gupta, J., considered elaborately on this aspect and held:

"Applying the principle laid down in the above case to the present rule, I find on the scrutiny of the Rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The Rule, thus enables the authority concerned to discriminate between two railway servants to both of whom R. 148(3) equally applied by taking action in one case and not taking it in the other. In the exercise of the discretion by the authority the rule has therefore to be struck down as contravening the requirements of Art. 14 of the Constitu- tion."

32. Even in Tulsiram Patel's case (supra) this Court declared that it must satisfy the test of justness, fairness and reasonableness of the procedure prescribed. But the proviso to Art. 311(2) was upheld for the reason that the Constitution itself made proviso--an exception to the prin- ciple of audi alteram partem engrafted in Art. 311(2) of the Constitution. As a fact, it expressed thus:

"As the making of such laws and the framing of such rules are subject to the provisions of the Constitution, if any such act or rules violates any of the provisions of the Constitution, it would be void. Thus, as held in Moti Ram Deka's case AIR 1964 SC 600 if any such act or rule tres- passes on the rights guaranteed to government servants by Art. 311, it would be void. Similarly, such acts and rules cannot abridge or restrict the pleasure of the President or the Governor of a State exercisable under Art. 3 10(1) further than what the Constitution has expressly done. In the same way, such Act or rule would be void if it violates any fundamental right guaranteed by part III of the Consti- tution."

Gurdev Singh's case declares the rules that empowered to order compulsory retirement of the Government employee after putting ten years of service as ultra vires. In S.S. Muley v.J.R.D. Tata, [1979] 2 SLR 438 (Bombay) my learned brother Sawant, J. (as he then was) held that Regulation 48 which empowered the employer uncanalised, unrestricted and arbi- trary power to terminate the service of an employee with notice or pay in lieu thereof without any opportunity of hearing as violative of principles of natural justice under Art. 14 of the Constitution.

In Superintendent of Post Office v.K. Vasayya, [1984] 3 Andhra Pradesh Law Journal 9 the respondent Vasayya was denied of the appointment as a Clerk on the ground that the Confidential Reports submitted by the Police disclosed adverse comments on the conduct of the respondent. When the appointment was denied on that basis it was held that though the selection to a public office is a privilege and no vested right has been accrued till the candidate is appoint- ed, in the context of fair play in action subserving the mandate of Art. 14 held at p. 45 thus:

"Often times, convenience and justice are not on speaking terms. It is the actual administration of law and not only the manner in which it is done that reflects the action of the State in assuring the equal protection to a citizen. In adopting the procedure, as held by Frankfurther, J. in Joint Anti Facist Refugee Commission v. Mc. Grath, 34 1 US 123 that a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely

depends on the mode by which it was reached. Secrecy is not congenial to truth. Seeking and self-righteousness gives too slander an assurance of right- ness. No better instrument has been devised for arriving at the truth than to give a person in jeopardy of a serious loss, a notice of the case against him and an opportunity to meet it, nor has a better way been found for generating the feeling so important to a popular Government that justice has been done."

Bradley, J. in United States v. Samuel D. singleton, [1981] 109 US 3 has held that:

"No State shall make or enforce any law which abrogate the privileges or immunities of citizens of the United States." In Ramana's case (supra), it has been held that: is indeed unthinkable that in a democracy governed by the rule of law, the executive Govt. or any of its offi- cers should possess arbitrary power over the interests of the individual .....

The procedure adopted should match with what justice de- mands. History shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imper- ceptibly but surely erode the foundations of liberty." Doughlas, J. in Joint Anti Facist Refugee Commission's case (supra) held that:

"This is a Government of laws not of men. The powers being used are the powers of the Government over the reputation and fortunes of citizens. In situations far less severe or important than those a party is told the nature of the charge against him."

Harry W. Jones in his "Rule of law and Welfare State", 1958 Columbia Law Review, 143 at 146 stated that: "What is needed then is to make the welfare state itself a source of new "rights" and to surround the "rights" in public benefaction with legal safeguards both procedural and substantive comparable to those enjoyed by the traditional right of property in our law."

Accordingly it was held that prior opportunity of hearing before denying appointment is a mandate of Art. 14 of the Constitution. In West Bengal Electricity Board & Ors. v. D.B. Ghosh & Ors., [1985] 2 SCR 1014 in similar circumstances, it was held that the regulation as "Herry VIII Clause as ultra vires of Art. 14 of the Constitution. The same principle was reiterated in Brojonath's case.

In Workman of Hindustan Steel Ltd. & Anr. v. Hindustan Steel Ltd. & Ors., [1985] 2 SCR 428 the standing order that empowers the manager to dispense with the enquiry and to dismiss an employee without any obligation to record reasons was held to be drastic power but directed to amend the standing orders consistent with proviso to Art. 311(2) of the Constitution. This Court in O.P. Bhandari v. Indian Tourism Development Corpn. Ltd. & Ors., [1986] 4 SCC 337 struck down the similar rule on the same doctrine of 'hire and fire' and that it is impermissible under the constitu- tion of the scheme to sustain the doctrine of 'hire and fire'. In Chandrabhan's case, Rule 15(1)(ii)(b) of Bombay Service Rule was held to be void. In A.P.S.R.T. Corpn. v. Labour Court, AIR (1980) A.P. 132 a Full Bench of Andhra Pradesh High Court held that the legislature is not compe- tent to make law abridging the right to work. In R.M.D. Chamarbaugwalla v. State of Punjab, [1957] SCR 930 it was held that any Act violating fundamental rights is void. In Kanhialal v. District Judge & Ors., [1983] 3 SCC 32 this Court held that termination of the service of a tempo- rary employee without affording opportunity is penal in character and violates Art. 311(2) and was void. In M.K. Agarwal v, Gurgaon Gramin Bank & Ors., [1987] Suppl. SCC. 643 this Court struck down regulation 10(2)(a) of the Gurg- aon Gramin Bank (Staff) Services Rules, 1980. In this light it is not open to the State to contend that "look here; though Constitution enjoins and admonishes us saying

that it is no longer open to the State to make law or rule violating the rights created under Arts. 14 and 21, the citizen, with a view to secure public employment from us had contracted out of the constitutional rights and agreed to abide by rules including the termination of his/her services at any time at our will without notice or opportunity even for misconduct, negligence, inefficiency, corruption or rank nepotism, so we are free to impose the said punishment." Even in the case of minority institutions, when the employ- ees are dismissed on the principle of hire and fire, this Court held it to be impermissible vide All Saints High School v. Government of A.P., [1980] 2 SCR 924 & 938 e to f; Frank Anthoney Public School v. Union of India, [1987] 1 SCR 238 & 269 b to e; Christian Medical College Hospital Employ- ees' Union & Anr. v. Christian Medical College, Veilore Association & Ors., [1988] 1 SCR 546 & 562.

In Moti Ram Deka's case this Court held that rules 148(3) and 149(3) trespassed upon the rights guaranteed to government servants by Art. 311(2) and would be void. In Kameshwar Prasad v. State of Bihar, [1962] Suppl. 3 SCR 369. Rule 4A of the Bihar Government Servants' Conduct Rules, 1956, in so far as it prohibited any form of demon- stration was struck down by this Court as being violative of sub-clauses (a) and (b) of clause (1) of Art. 19. In O.K. Ghosh v. EZX Joseph, [1963] Suppl. 1 SCR 789 this Court 'struck down Rule 4A of the Central Civil Services (Conduct Rules), 1955, on the ground that it violated sub-clause (c) of clause (1) of Art. 19 of the Constitution and that por- tion of Rule 4A which prohibited participation in any demon- stration as being violative of sub-clauses (a) and (b) of clause (1) of Article 19. It must, therefore, be hold that any act or provision therein, Rules or Regulations or instructions having statutory force violating fundamental rights under Articles 14, 16(1), 19(1)(g) and 21 are void.

33. Thus it could be hold that Art. 14 read with 16(1) accords right to an equality or an equal treatment consist- ent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instru- mentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom. than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty. The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment. The exercise of discretionary power wide of mark would bread arbitrary, unreasonable or unfair actions and would not be consistent with reason and justice. The provisions of a statute, regulations or rules that empower an employer or the 'management to dismiss, remove or reduce in rank of an employee, must be consistent with just, rea- sonable and fair procedure. It would, further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accord- ance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Art. 21 of the Constitu- tion. Any procedure prescribed to deprive such a right to livelihood or continued employment must be just, fair and reasonable procedure. In other words an employee in a public employment also must not be arbitrarily unjustly and unrea- sonably be deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise any law or rule in violation thereof is void.

Need for harmony between social interest and individual right

34. Undoubtedly efficiency of the administration and the discipline among the employees is very vital to the successful functioning of an institution or maximum produc- tion of goods or proper maintenance of the services. Disci- pline in that regard among the employees is its essential facet and has to be maintained. The society is vitally interested in the due discharge of the duties by the govern- ment employees or employees of corporate bodies'or statutory authorities or instrumentalities under Art. 12 of the Constitution. As held in Tulsiram Patel's case the public are vitally interested in the efficiency and integrity of the public service. The government or corporate employees are, after all, paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. The employees are charged with public duty and they should perform their public duties with deep sense of responsibility. The collective responsi- bility of all the officers from top most to the lowest maximises the efficient public administration. They must, therefore, be held to have individual as well as collective responsibility in discharge of their duties faithfully, honestly with full dedication and utmost devotion to duty for the progress of the country. Equally the employees must also have a feeling that they have security of tenure. They should also have an involvement on their part in the organi- sation or institution, corporation, etc. They need assurance of service and they need protection. The public interest and the public good demand, that those who discharge their duties honestly, efficiently and with a sense of devotion and dedication to duty should receive adequate protection and security of tenure. Equally inefficient, dishonest and corrupt or who became security risk should be weeded out so that successful functioning of the industry or manufacture of the goods or rendering or services would be available at the maximum level to the society and society thereby re- ceives optimum benefit from the public money expanded on them as salary and other perks. Therefore, when a situation envisaged under statute or statutory rule or regulation or instructions having statutory force to remove or dismiss an employee the question arises whether they need at least minimum protection of fair play in action.

34A. In Vasayya's case when a similar contention was raised I have stated at p. 47 in Para 130 & 13 1 that. The Audi alteram partem rule must be flexible; malleable and an adaptable concept to adjust and harmonise the need for speed and obligation to act fairly. When the rights of the Government are widely stressed, the rights of the person are often threatened, when the latter are ever emphasised Government becomes weak to keep order. Therefore, the rule can be tailored and the measure of its application cut short in reasonable proportion to the exigencies of the situation. The administrative agency can develop a technique of deci- sion worthy being called "ethos of adjudication". Meaningful statutory standards, realistic procedural requirements and discriminatory techniques of judicial review are among the tools to control the discretionary power. It makes no difference whether the occasion for the exercise of power is personal default or act of policy. Good administration demands fair consultation in each case and this the law can and should enforce. The insistence of the observance of fundamental fairness in the procedure becomes a balancing balm to alleviate apprehension of arbitrary decision by the executive Government while assuring opportu- nity to disabuse the prima facie impression formed against the person to usher in a era of largest good to largest number of people with proper checks and balances between needs of the State and the rights of the individual. The brooding omni benevolence and omnicompetency of the need for expediency and claim for justness interplay ethos of fair adjudication in action.

34B. Therefore, it is no well tuned solace to say that in a court of law at the fag end of the currier or after superannuation in the interregnum which often over takes the litigation, that the employee would be meted out with jus- tice (a grave uncertainty and exposing to frustrating pro- crastination of judicial process and expenses and social humiliation). Before depriving an employee of the means of livelihood to himself and his dependents, i.e. job, the procedure prescribed for such

deprivation must, therefore, be just, fair and reasonable under Arts. 21 and 14 and when infringes Art. 19(1)(g) must be subject to imposing reasona- ble restrictions under Art. 19(5). Conferment of power on a high rank officer is not always an assurance, in particular when the moral standards are generally degenerated that the power would be exercised objectively, reasonably, conscien- tiously, fairly and justly without inbuilt protection to an employee. Even officers who do their duty honestly and conscientiously are subject to great pressures and pulls. Therefore, the competing claims of the "public interest" as against "individual interest" of the employees are to be harmoniously blended so as to serve the societal need con- sistent with the constitutional scheme.

Statutory Construction:

35. Statutory construction raises a presumption that an Act or a provision therein a constitutionally valid unless it appears to be ultra vires or invalid. The legislature, subject to the provisions of the Constitution, has undoubt- edly unlimited powers to make law. In fairness to the learned Attorney General, he agrees that the impugned provi- sions are per se invalid. But he attempted to salvage them by resorting to the doctrine of reading down.

Reading a provision down when permissible.

The question emerges whether the doctrine of reading down would be applied to avoid a void law vesting with arbitrary power with a naked hire and fire draconian rule. It is difficult to give acceptance to extreme contention raised by Sri Garg and Sri Rama Murthy that the Courts cannot in the process of interpretation of the Statute would not make law but leave it to the legislature for necessary amendments. In an appropriate case Judges would articulate the inarticulate major premise and would give life and force to a Statute by reading harmoniously all the provisions ironing out the freezes. But the object is to alongate the purpose of the Act. In this regard 1 respectfully agree with my learned brother, my Lord the Chief Justice, on the prin- ciple of statutory construction. The question is whether Legislature intended to confer absolute power or would it be construed in such a way that would supplant the law but not supplement law made by the Legislature.

35A. Natural construction.

The golden rule of statutory construction is that the words and phrases or sentences should be construed according to the intent of legislature that passed the Act. All the provisions should be read together. If the words of the statutes are in themselves precise and unambiguous, the words, or phrases or sentences themselves alone do, then no more can be necessary than to expound those words or phrases or sentences in their natural and ordinary sense. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the inten- tion, to call in aid the ground and cause of making the statute, and to have the recourse to the preamble, which is a key to open the minds of the makers of the statute and the mischiefs which the Act intend to redress. In determining the meaning of statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intent of the legislature then it is proper to look for some other possible meaning then the court cannot go fur- ther.

35. Craie's Statute Law, Seventh Edition in Chapter 5, at page 64 it is stated that where the words of an Act are clear, there is no need for applying any of the principles of interpretation which are

merely presumptions in cases of ambiguity in the statute. The safer and more correct course of dealing with the question of construction is to take the words themselves and arrive, if possible, at their meaning without in the first place refer to cases. Where an ambiguity arises to supposed intention of the legislature, one of the statutory constructions, the court profounded is the doctrine. of reading down. Lord Reid in Federal Steam Navigation Co. v. Department of Trade and Industry, [1974] 2 All E.R. 97 at p. 100 (as also extracted by Cross Statutory Interpretation, Butterworths' Edition, 1976 at page 43 in preposition 3) has stated thus:

"the judge may read in words which he considers to be neces- sarily implied by words which are already in the statute and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelli- gible, absured or totally unreasonable, unworkable, or totally irre-concileabIe with the rest of the statute." At page 92 of the Cross Statutory Interpretation, the author has stated that "The power to add to, alter or ignore statutory words is an extremely limited one. Generally speaking it can only be exercised where there has been a demonstrable mistake on the part of the draftsman or where the consequence of applying the words in their ordinary, 6r discernible secondary, meaning would be utterly unreasona- ble. Even then the mistake may be thought to be beyond correction by the court, or the tenor of the statute may be such as to preclude the addition of words to avoid an unrea- sonable result." Therefore, the Doctrine of Reading Down is an internal aid to construe the word or phrase in statute to give reasonable meaning, but not to detract distort or emasculate the language so as to give the supposed purpose to avoid unconstitutionality

35C. This Court in Saints High School, Hyderabad v. Govt. of A.P., [1980] 2 SCR 924 held that:

"this Court has in several cases adopted the reading down the provisions of the Statute. The reading down of a provi- sion of a statute puts into operation the principle that so far as is reasonably possible to do so, the legislation should be construed as being within its power. It is the principle effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond relevant legislative power, the Court would construe it in a more limited sense so as to keep it within the power."

Similarly restricted meaning was ascribed by Maxwell in his Interpretation of the Statutes XII Edn. at p. 109 under the caption "Restriction of operation" that sometimes to keep the Act within the limits of its scope and not to disturb the existing law beyond what the object requires, it is construed as operative between certain purposes only even though the language expresses no such circumspection of field of operation.

36. It is, thus, clear that the object of reading down is to keep the operation of the statute within the purpose of the Act and consitutionally valid. In this regard it is equally of necessity to remind ourselves as held by this Court in Minerva Mills' case that when the effect of Art. 31 was asked to be read down so as to save it from unconstitu- tionality this Court held that it is not permissible to read down the statutory provisions when the avowed purpose is to confer power on an authority without any limitation whatever and that at p. 259D and G it was held that the principle of reading down cannot be used to distort when words of width are used even advertantly. In Elliott Ashton Welsh, II v. United States. 398 U.S. 333 (26 Lawyer's Edition 2nd, 308 at 327) Herfan, J. at 327 held that "when the plain thrust of a legislative enactment can only be circumvented by distortion to avert constitutional collision, it can only by exalting form over substance that one can justify veering of the path that has been plainly marked by the Statute. Such a course betrays extreme

skepticism as to constitutionality and in this instance reflects a groping to preserve conscientious objecter exemption at all costs I cannot subscribe wholly to emasculated construction of a statute to avoid facing con- stitutional question in purported fidelity to the statutory doctrine of avoiding unnecessary resolution of constitution- al issues."

36A. In Nalinakhya Bysack v. Shyam Sunder Haldar & Ors., [1953] SCR 533 at 544-45 this Court has refused to rewrite legislation to make up omissions of the Legislature. In Moti Ram Deka's case when Rule 148(3) and Rule 149(3) of the Railway Establishment Code were sought to be sus- tained on the 'principle of reading down', this court held thus:

"There is one more point which still remains to be consid- ered and that is the point of construction. The learned Addl. Solicitor General argued that in construing the im- pugned R. 148(3) as well as R. 149(3), we ought to take into account the fact that the Rule as amended has been so framed as to avoid conflict with or non-compliance of, the provisions of Art. 311(2), and so, he suggests that we should adopt that interpretation of the Rule which would be consistent with Art. 311(2). The argument is that the termi- nation of services permissible under the impugned rules really proceeds on administrative grounds or considerations of exigencies of service. If, for instance, the post held by a permanent servant is abolished, or the whole of the cadre to which the post belonged is brought to an end and the railway servant's services are terminated in consequence, that cannot amount his removal because the termination of his service is not based on any consideration personal to the servant. In support of this argument, the Addl. Solici- tor General wants us to test the provision contained in the latter portion of the impugned rules. We are not impressed by this argument. What are not impressed by this argument. What the latter portion of the impugned Rules provide is that in case a railway servant is dealt with under that portion, no notice need be served on him. The first part of the Rules can reasonably and legitimately take in all cases and may be used even in respect of cases falling under the latter category, provided, of course, notice for the speci- fied period or salary in lieu of such notice is given to the railway servant. There is no doubt that on a fair construc- tion, the impugned Rules authorise the Railway Administra- tion to terminate the services of all the permanent servants to whom the Rules apply merely on giving notice for the specified period or on payment of salary in lieu thereof and that clearly amounts to the removal of the servant in ques- tion. Therefore, we are satisfied that the impugned rules are invalid inasmuch as they are inconsistent with the provisions contained in Art. 311(2). The termination of the permanent servant's tenure which is authorised by the said Rules is no more and no less than their removal from serv- ice, and so, Art. 311(2) must come into play in respect of such cases. That being so, the Rule which does not require compliance with the procedure prescribed by Art. 311(2) must be struck down as invalid."

37. I am, therefore, inclined to hold that the Courts though, have no power to amend the law by process of inter- pretation, but do have power to mend it so as to be in confirmity with the intendment of the legislature. Doctrine of reading down is one of the principles of interpretation of statute in that process. But when the offending language used by the legislature is clear, precise and unambiguous, violating the relevant provisions in the constitution, resort cannot be had to the doctrine of read- ing down to blow life into the void law to save from uncon- stitutionality or to confer jurisdiction on the legislature. Similarly it cannot be taken aid of to emasculate the pre- cise, explicit, clear and unambiguous language to confer arbitrary, unbridled and uncanalised power on an employer which is a negation to just, fair and reasonable procedure envisaged under Articles 14 and 21 of the Constitution and to direct the authorities to record reasons, unknown or unintended procedure, in the manner argued by the learned counsel for the appellants.

38. At the cost of repetition it is to reiterate that when the authority intends to take disciplinary action for imposing penalty of dismissal, removal or reduction in rank of an employee, an elaborate procedure has been provided in Regulation 15 to conduct an enquiry into misconduct after giving reasonable opportunity. Residuary power has been avowedly conferred in Regulation 9(b) with wide discretion on the appropriate authority to take actions on similar set of facts but without any guidelines or procedure at the absolute discretion of the same authority. The language of Regulation 9(b) is not capable of two interpretations. This power appears to be in addition to the normal power in Regulation 15. Thereby the legislative intention is manifest that it intended to confer such draconian power couched in language of width which hangs like Damocles sword on the neck of the employee, keeping every employee on tenterhook under constant pressure of uncertainty, precarious tenure at all times right from the date of appointment till date of superannuation. It equally enables the employer to pick and choose an employee at whim or vagary to terminate the serv- ice arbitrarily and capriciously.

39. Regulation 9(b), thereby deliberately conferred wide power of termination of services of the employee without following the principle of audi alteram partem or even modicum of procedure of representation before terminating the services of permanent employee. It is well settled rule of statutory construction that when two interpretations are possible one which would preserve and save constitutionality of a particular Statute, would be preferred to the other that would render it unconstitutional and void. When the language is clear, unambiguous and specific and it does not lead to the constructions, it is not permissible to read into those provisions something which is not intended. It is undoubtedly true as rightly contended by Mr. Ashok Desai, the learned Solicitor General that the power to take appropriate and expeditious action to meet the exigencies of weeding out inefficient, corrupt, indolent officers or employees from service should be provided and preserved to the competent authority. Any action taken without any modicum of reasonable procedure and prior oppor- tunity always generates an unquenchable feeling that unfair treatment was meted out to the aggrieved employee. To pre- vent miscarriage of justice or to arrest a nursing grievance that arbitrary, whimsical or capricious action was taken behind the back of an employee without opportunity, the law must provide a fair, just and reasonable procedure as is exigible in a given circumstances as adumbrated in proviso to Art. 311(2) of the Constitution. If an individual action is taken as per the procedure on its own facts its legality may be tested. But it would be no justification to confer power with wide discretion on any authority without any procedure which would not meet the test of justness, fair- ness and reasonableness envisaged under Arts. 14 and 21 of the Constitution. In this context it is important to empha- sise that the absence of arbitrary power is the first essen- tial of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, dis- cretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any princi- ple or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey--"Law of the Constitution"--10th Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in United States v. Wunderlick, 342 U.S. 98 "then it has freed man from the unlimited discretion of some rules ..... where discre- tion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes "means should discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful," as followed in this Court in S.G. Jaisinghani v. Union of

India., [1967] 2 SCR 703.

40. In an appropriate case where there is no sufficient evidence available to inflict by way of disciplinary meas- ure, penalty of dismissal or removal from service and to meet such a situation, it is not as if that the authority is lacking any power to make Rules or regulations to give a notice of opportunity with the grounds or the material on records on which it proposed to take action, consider the objections and record reasons on the basis of which it had taken action and communicate the same. However scanty the material may be, it must form foundation. This minimal procedure should be made part of the procedure lest the exercise of the power is capable of abuse for good as well as for whimsical or capricious purposes for reasons best known to the authority and not germane for the purpose for which the power was conferred. The action based on recording reasoning without communication would always be viewed with suspicion. There- fore, 1 hold that conferment of power with wide discretion without any guidelines, without any just, fair or reasonable procedure is constitutionally anathema to Arts. 14, 16(1), 19(1)(g) and 21 of the Constitution. Doctrine of reading down cannot be extended to such a situation.

41. It is undoubted that in In re Hindu Women's Right to Property Act, [1941] FCR 12 involve the interpretation of single word "property" in the context to legislative compe- tency but that cannot be extended to the facts of these cases. R.M.D. Charnarbaugwalla's case is of severability and of a single word competition. The interpretation therein also cannot be extended to the facts of these cases. Even the case of K.N. Singh v. State of Bihar, [19621 Suppl. 2 SCR 769 involve interpretation of Section 124(A) I.P.C. in the context of freedom of speech enshrined under Art. 19(1)(a) of the Constitution. The interpretation was put as to subserve the freedom under Art. 19(1)(a). R.L. Arora v. State of U.P., [1964] 6 SCR 784 does not involve of the doctrine of reading down so as to cut down the scope of Fundamental Right. Similarly Jagdish Pandey v. Chancellor of the Bihar, [1969] 1 SCR 23 1 also does not concern with application of doctrine of reading down so as to sacrifice the principle of natural justice which are considered as essential part of rule of law. In Amritsar Municipality v. State of Punjab, [1969] 3 SCR 447 the court ascertained the intention of the Legislature and interpreted the Act con- sistent with the said intention. Sunil Batra v. Delhi Admn., [1978] 4 SCC 494 is also a decision where it was found that the intention of the Legislature was not to confer arbitrary power. N.C. Dalwadi v. State of Gujarat, [1987] 3 SCC 611 is also a case giving reasonable interpretation of the inten- tion of the provisions of the Statute and is not capable of the meaning. In Charanlal Sahu v. Union of India, [1989] Suppl. Scale (1) at p. 61 on which strong reliance was placed by both the learned Attorney General and Solicitor General, is a case capable of two interpretations to Sec. 4. The decisions cited by Shri Ashok Desai i.e. Delhi Transport Undertaking v. Balbir Saran Goel, [1970] 3 SCR 757; Air India Corporation v. Rebellow, [1972] 3 SCR 606; Municipal Corporation of Greater Bombay v. P.S. Malvankar, [1978] 3 SCR 1000 concern the industrial Iaw wherein the validity of rules on the touch-stone of the reasonableness, fairness or justness was not considered. The prevailing doctrine of reasonable classification and nexus had their play to uphold the validity of the provisions.

42. It is undoubtedly true as contended by Sri Bhasin, learned counsel for the intervener, that it is open to the authorities to terminate the services of a temporary employ- ee without holding an enquiry. But in view of the match of law made, viz., that it is not the form of the action but the substance of the order is to be looked into, it is open to the Court to lift the veil and pierce the impugned action to find whether the impugned action is the foundation to impose punishment or is only a motive. A larger Bench of seven Judges of this Court in Shamsher Singh v. State of Punjab, [1975] 4 SCR 814 elaborately considered the question and laid down the rule in this regard. The

play of fair play is to secure justice procedural as well as substantive. The substance of the order, the effect thereof is to be looked into. Whether no misconduct spurns the action or whether the services of a probationer is terminated without imputation of misconduct is the test. Termination simpliciter, either due to loss of confidence or unsuitability to the post may be a relevant factor to terminate the services of a proba- tioner. But it must be hedged with a bonafide over-all consideration of the previous conduct without trained with either mala-fide or colourable exercise of power or for extraneous considerations. Such actions were upheld by this Court. The action must be done honestly with due care and prudence.

43. In view of the march of law made by Art. 14, in particular after Maneka Gandhi's case, it is too late in the day to contend that the competent authority would be vested with wide discretionary power without any proper guidelines or the procedure. The further contention that the preamble, the other rules and the circumstances could be taken aid of in reading down the provisions of the impugned rules or the regulations is also of no assistance when it is found that the legislative intention is unmistakably clear, unambiguous and specific. Thus considered, I have no hesitation to conclude that the impugned regulation 9(b) of the Regula- tions are arbitrary, unjust, unfair and unreasonable offend- ing Arts. 14, 16(1), 19(1)(g) and 21 of the Constitution. It is also opposite to the public policy and thereby is void under Section 23 of the Indian Contract Act.

44. It is made clear that, as suggested by this Court in Hindustan Steel Case that it is for concerned to make appro- priate rules or regulations and to take appropriate action even without resorting to elaborate enquiry needed consist- ent with the constitutional scheme. The correctness of the decision in Tulsiram Patel's case though was doubted in Ram Chunder v. Union of India, [1986] 2 SCR 980 it is unneces- sary to go into that question. For the purpose of this case it is sufficient to hold that proviso to Art. 311(2) itself is a constitutional provision which excluded the applicabil- ity of Art. 311(2) as an exception for stated grounds. It must be remembered that the authority taking action under either of the clauses (b) or (c) to proviso are enjoined to record reasons, though the reasons are not subject to judi- cial scrutiny, but to find the basis of which or the ground on which or the circumstances under which they are satisfied to resort to the exercise of the power under either of the two relevant clauses to proviso to Art. 311(2) of the Con- stitution. Recording reasons itself is a safeguard for preventing to take arbitrary or unjust action. That ratio cannot be made applicable to the statutory rules.

45. Accordingly I hold that the ratio in Brojonath's- case was correctly laid and requires no reconsideration and the cases are to be decided in the light of the law laid above. From the light shed by the path I tread, I express my deep regrets for my inability to agree with my learned brother, the Hon'ble Chief Justice on the applicability of the doctrine of reading down to sustain the offending provi- sions. I agree with my brothren B.C. Ray and P.B. Sawant, JJ. with their reasoning and conclusions in addition to what I have laid earlier.

46. The appeal is accordingly dismissed, but without costs. Similarly Civil Appeal No. 1115 of 1976 is allowed and the monetary relief granted is reasonable, but parties are directed to bear their own costs. Rest of the matters will be disposed of by the Division Bench in the light of the above law.

In view of the majority judgment, Civil Appeal No. 2876 of 1986 (Delhi Transport Corporation v. D.T.C. Mazdoor Con- gress) is dismissed. Civil Appeal No. 11 15 of 1976 (Satnam Singh v. Zilla Parishad Ferozepur & Ant., is allowed and the other cases snail be placed before a division bench for final disposal.

C.A. 2876/86 is dismissed

N.P.V. &C.A. 1115/76 isallowed.

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