ANDHRA PRADESH HIGH COURT

Superintendent of Post Offices

Vs

Kalluri Vasayya

(Chennakesav Reddi and Ramaswami, JJ.)

22.04.1983

JUDGMENT

Chennakesav Reddi, J.

1. A controversy of considerable interest and public importance is aroused by this Writ Appeal preferred under Clause 15 of the Letters Patent against the order of our learned brother Jeevan Reddy, J. It is (a) whether right to employment is a fundamental right guaranteed under Art. 16 of the Constitution and (b) whether past prejudicial conduct and antecedents of a person relating to his subversive political activity prescribed as a disqualification for employment under Government of India in Office Memoranda dated 27th September, 1967 and 1st August, 1975 of the Ministry of Home Affairs, Government of India, amounts to an infraction of the provisions of Art. 16 of the Constitution.

2. The controversy in this case grew out of the denial of employment to one Kalluri Vasayya, to a Civil post - a post of Time-Scale Clerk in the Indian Posts and Telegraphs Department, Government of India. Vasayya, a Science Graduate, applied for the post of Time-Scale Clerk in the Indian Posts and Telegraphs Department. He was selected for the post and was allotted to Khammam Postal Division. He was asked by the appointing authority viz., the Superintendent of Post Offices, Khammam, to produce the original certificates and medical certificate of fitness and the prescribed attestation from duly filled in for the verification of his character and antecedents. In the attestation form filled in by the candidate, he disclosed that he has been convicted by a Court of Law for an offence punishable under S. 25(A) read with S. 3 of the Indian Arms Act in C.C. No. 12 of 1970 on the file of the Judicial First Class Magistrate, at Madhira and sentenced to rigorous imprisonment for one year. On appeal, the sentence, it appears, was reduced to rigorous imprisonment for 4 months. On a further revision to the High Court, the High Court in Crl. R.C. No. 537 of 1970 confirmed the conviction but instead of sentencing him to any punishment, directed his release under S. 562 Cr. P.C. on probation of good conduct. The attestation form contained full details and history of the candidate's academic qualifications, places of study, past history etc. The appointing authority then ordered on the receipt of the attestation form, verification of the character and antecedents of the candidate by the Collector and District Magistrate, Khammam. The Collector on verification of the character and antecedents reported to the Superintendent of Post Offices by his letter dated 18th September, 1978 that Kalluri Vasayya was an extremist underground member of Chandra Pulla Reddy group

during 1968 and 1969, that on the intervening nights of 16/17th September, 1969. Vasayya along with five other underground extremists were arrested at Ginnelavagu of Gopalpet forest and six unlicensed S.B.M.L. guns and two country made bombs were seized from their possession. It was further reported that after his release from the jail, Vasayya worked as plain area organiser of the extremist party in Khammam taluk by harbouring the under area cadres of the extremist party and he was closely moving with the P.D.S.U. and other Sympathisers of the extremists like Vaddeli Krishna Murthy etc. Therefore, in view of the report relating to the past character and antecedents of Vasayya, the Superintendent of Post Officers cancelled the selection and did not depute Vasayya for training. The 3 other candidates who were selected along with Vasayya were deputed to training. Vasayya, therefore approached the Superintendent of Post Offices, Khammam to ascertain as to why he was not sent for training while the others selected along with him were deputed to training. The Superintendent of Post Offices informed him that he was not deputed for training since the report relating to his character and antecedents from the Collector was still awaited. Aggrieved against the alleged discriminatory action of the Superintendent of Post Offices in not deputing him for training alongwith the other candidates selected for the post of Time-Scale clerk, Vasayya, filed the Writ Petition on 19th September, 1978 contending that the action of the Superintendent of Post Offices who is impleaded as the first respondent in the Writ Petition was violative of Art. 16 of the Constitution. It was further stated by him in the Writ petition that he has no association with the naxalite movement and that the police of Hanamkonda filed a case against him under the Arms Act while he was a student in the Government High School, Hanamkonda on a mere suspicion. He contended that denial of employment to him on the ground of his previous conviction was bad in law.

3. The writ petition was resisted by the respondents. It was pleaded that the Government had every right to verify the suitability of a person with reference to his character and antecedents before entertaining him to public service. It was also contended that the petitioner had not acquired any right of employment simply because he was selected for the post and that in any case mere selection to a post does not confer any right which can be enforced in a writ proceedings.

4. Jeevan Reddy, J., who heard the writ petition held that no person can be considered unfit for public employment solely because of his political affiliation and expression prior to employment. He held that the petitioner can be disqualified for public employment on the ground of participation in or association of a programme aimed at the organised breach or defiance of the law involving violence. But before a person is denied employment on the basis of adverse report relating to violent activities, he must be given an opportunity to explain the acts alleged against him and any denial of such opportunity is violative of the principles of natural justice. He also held that the conviction for possession of an unlicensed arm does not amount to participation or programme and that too the conviction was in respect of an offence committed in 1969 and, therefore, it is not a relevant consideration for denial of employment. Accordingly, the writ petition was allowed and the respondent was directed to give an opportunity to the petitioner to meet the allegations contained in the Collector's report and decide the suitability of the petitioner's appointment for the post.

5. Aggrieved against the said decision of the learned Single Judge, the Central Government has preferred this writ appeal.

6. The learned Standing Counsel for the Central Government firstly submits that the petitioner has only been selected and included in the panel for appointment and has not been appointed as a Time-Scale Clerk, that Art. 16 does not guarantee a right to public employment, but only an equal opportunity for public employment which means only a right of consideration along with other applicants. Therefore, it is submitted that the petitioner has no right that could be enforced under Art. 226 of the Constitution.

7. On the other hand, the learned Counsel for the petitioner pleads that the denial of employment was purely on consideration of his character and antecedents prior to employment that the petitioner's application was not considered on the ground of his bad character and antecedents although good antecedents is not a qualification prescribed for selection and that the denial of employment on the ground of bad antecedents amounts to infraction of Art. 16 of the Constitution.

8. Art. 16(1) only guarantees equality of opportunity under the State. The right guaranteed under Art. 16 is only a right to make an application for any post under the Government and a right to be considered on merits for the post for which an application has been made. That does not mean that the Article guarantees a right to public employment. Opportunities for all, for employment must in fact be equal and the contest must be fair and decent. When several persons compete for jobs, some are successful and others unsuccessful. Every selection is a test of worth and selection of some human qualities suitable for the job. The mere fact that a person has right to make an application does not give a right to be appointed. It does not give rise to any vested right that can be enforced.

9. In High Court, Calcutta v. Amal Kumar Roy the Supreme Court considered the scope of equality clause under Art. 16 of the Constitution and observed :

> "The plaintiffs case was considered along with that of the others, and the High Court, after a consideration of the relative fitness of the Munsifs chose to place a number of them on the panel for appointment as Subordinate Judges, as and when vacancies occurred. He had, therefore, along with others equal opportunity. But equal opportunity does not mean getting the particular post for which a number of persons may have been considered. So long as the plaintiff along with others under consideration, had been given a chance, it cannot be said that he had not equal opportunity along with others, who may have been selected in preference to him. Where the number of posts to be filled is less than the number of persons under consideration for those posts, it would be a case of many being called and few being chosen. The fact that the High Court made its choice in a particular way cannot be said to amount to discrimination against the plaintiff."

10. Again in Krishan Chander Nayar v. The Chairman, Central Tractor Organisation the Supreme Court said :

> "The fundamental right guaranteed by the Constitution was not only to make an application for a post under the Government but the further right to be considered on merits for the post for which an application had been made."

11. The Supreme Court in N. M. Siddique v. Union of India [1978-I L.L.J. 212] observed :

> "The mere circumstance that the employee was put on a panel for promotion does not

mean that be would have been automatically promoted to the higher post. Being empanelled for promotion confers upon the employee concerned the limited right of being considered for promotion, which is another way of saying that the employees who are put on the panel framed for promotion to a higher post, are at the given moment considered eligible for promotion. Events subsequent to the formation of the panel may render any person, who is included in the panel, unfit for promotion."

12. The Supreme Court again in The State of Haryana v. Subhash Chander Marwaha [1973-II L.L.J. 266] said :

"The mere fact that a candidate's name appears in the list will not entitle him to mandamus that he be appointed ..... There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence."

13. In this case, the petitioner made an application. His application was considered and his name placed on the merit list. Subsequently he was not appointed as it was reported on verification that his character and antecedents were unsatisfactory. The right to make an application for the post and his right for consideration of his case for the post were not denied. Therefore, there was no violation of Art. 16 of the Constitution. The mere fact that his name was included in the merit list will not give him a right for the issue of a mandamus for appointment to the post.

14. The question then is whether verification of past bad character and antecedents in pursuance of Office Memorandum dated 27th September, 1967 to determine suitability for employment amounts to breach of Art. 14 and 16 of Constitution. It is submitted that an employer has no concern with past conduct and antecedents of a person and scrutiny of the same to determine his suitability ought not to be permitted by this Court, lest such procedure should defeat the object of Art. 16 of the Constitution. Even if such verification is valid, the report could not be relied upon, contends the petitioner, before complying with the principles of natural justice. Before proceeding to consider this question, it is necessary to read the instructions given by the Government of India of Office Memorandum No. 3/8/(S)/67-Ests. (B) dated 27th September, 1967.

"Sub : Verification of character and antecedents of candidates selected for appointment to civil posts under the Government of India - Review of the procedure and revision of instructions regarding.Attention is invited to the instructions contained in Home Department's O.M. No. 20/58/45-Ests. (S) dated 7th February, 1947, which lay down some of the principles behind the practice of verification of character and antecedents of candidates selected for appointment under the Government of India. Certain apprehensions have been expressed regarding the interpretation of the criteria laid down in para 2(b) of this O.M. and it has been represented that candidates might be discriminated against on the basis of their political opinions or affiliations. Government's policy has been that no person should be considered unfit for appointment solely because of his political opinions but care has to be taken not to employ persons who are likely to be disloyal and to abuse the confidence placed in them by virtue of their appointment. Ordinarily persons who are actively engaged in subversive activities including members of any organisation, the avowed object of which is to change the existing order of society

by violent means, should be considered unfit for appointment under Government. In amplification of this criterion, it is hereby further clarified that an individual may be considered unsuitable for public employment only on the ground of his actual participation in or association with any objectionable activity or programme. Specifically, the following shall be considered undesirable for employment in civil posts in the public services :

a) those who are, or have been, members of, or associated with, any body or association declared unlawful after it was so declared, or
b) those who have participated in, or associated with any activity or programme :
(i) aimed at the subversion of the Constitution.
(ii) aimed at the organised breach or defiance of the law involving violence.
(iii) prejudicial to the interests of the sovereignty and integrity of India or the security of State, or
(iv) which promoted on grounds of religion, race, language, caste or community, feeling of enmity or hatred between different sections of the people.
Participation in such activities at any time after attaining the age of 21 years and within three years of date of enquiry should be considered as evidence that the person is still actively engaged in such activities unless in the interval there is positive evidence of a change of attitude.The competent authorities who make enquiries into the character and antecedents of candidates are being requested to specifically cover the above points in their report on the character and antecedents of candidates.

15. By another Office Memorandum No. 18011-1 (S) 75 Estt. (B) dated 1st August, 1975 issued by the Cabinet Secretariat, Department of Personnel and Administrative Reforms, attention of all the Ministers was invited to the Office Memorandum No. 3/8(S) 67-Estt. (B) dated 27th September, 1967 which inter alia determined the suitability of candidates for appointment to a civil post under the Central Government and it pointed out that it had been brought to the notice that in certain cases the appointing authorities made appointment of candidates without prior verification of character and antecedent and later, on receipt of verification reports they failed to observe the prescribed criteria in determining the suitability of candidates for appointment to a civil post under the Central Government. It was also pointed out that in some cases the contents of the police reports were made known to the appointees or their attorneys and were also produced before the Courts of law and the termination of services of the appointees with adverse reports in such cases where proper procedure as prescribed was not followed by the authorities concerned had been criticised in certain court and has also caused various administrative difficulties. All the departments were therefore directed that they should in future scrupulously follow the various instructions prescribed in that regard. As regards the criteria to be observed for determining the suitability of the candidates for Government service, the criteria laid down in the Office Memorandum dated 27th September, 1967 were practically reiterated and the appointing authorities were directed to take decision regarding the suitability of candidates for appointment to a civil post on receipt of the report of the concerned authorities on the verification of character and antecedents of the candidates in question in light of the observations made in the report keeping in view the criteria laid down for determining the suitability of a candidate for public service. It was further laid down in the Office Memorandum dated 27th September, 1967 that no indication should be given to any candidate who is appointed under exceptional circumstances without prior verification of character that the appointment or retention in service was subject to satisfactory verification of character and antecedents. The memo further added that in cases

where it becomes necessary to terminate the services on account of adverse reports received subsequent to the appointment, the fact that action is being taken on the results of a police report should not be divulged to the employees nor should the nature or substance of the reports from the police be communicated under any circumstances to the employees. Thus the report in respect of character and antecedents of a candidate was made a confidential report that ought not to be communicated under any circumstances to the candidate.

16. In pursuance of the aforesaid Memorandum of the Government, the Superintendent of the Post Offices, Khammam, called for a report from the Collector and District Magistrate relating to the character and antecedents of the petitioner. The report of the Collector to the Superintendent of Post Offices was as follows :

> "I invite attention to the reference cited. The Superintendent of Police, Intelligence A.P., Hyderabad in the reference 4th cited has reported that Kalluri Vasayya s/o Shri Seetharamaiah was an extremist underground member of Chandra Pulla Reddy group during 1968 and 1969. On the intervening night of 16/17th September, 1969 this individual along with five other underground extremists all armed with S.B.M.L. guns were arrested in Ginnelavagu of Gopalpet forest. Six unlicenced S.B.M.L. guns and two country made bombs were seized from their possession vide Cr. No. 21/69 u/s. 25(1)(a) Indian Arms Act and S. 5 of the Explosives Act of Wyra Police Station of Khammam District. Sri Vasayya was convicted and sentenced to undergo rigorous imprisonment for one year along with other accused in C.C. No. 12/70 by J.F.C.M. Madhira on 23rd April, 1970. On appeal by the accused in the Sessions Court, Khammam the sentence was reduced to 4 months R.I. in Cr. A. No. 1/70. On further appeal in the High Court of Andhra Pradesh, the order of the Sessions Judge was modified and the accused was released u/s. 562 Cr. P.C. on probation of good conduct on the personal bond of Rs. 2,000/- with two sureties of like amount. Since his release from jail, Vasayya worked as Plan Area Organiser of the extremist party in Khammam Taluk by harbouring the Under Area Cadres of the extremist party. Still he is closely moving with the P.D.S.U. and other sympathisers of the extremists like Vaddeli Krishna Murthi etc. He attended the State 2nd General Council Meeting of the P.D.S.U. held at Merchant's Association Hall, Khammam from 2nd July, 1978 to 5th July, 1978. He was elected as Joint Secretary of the Indo-China Friendship Association, Khammam District on 6th April, 1974."

17. On the basis of the report, the petitioner was considered unsuitable for the employment.

18. The first question is whether the Office Memorandum have the force of law and an enquiry can be made about the character and antecedents of a person. It is now well settled that if the rules are silent on any particular point, the Government may fill up the gaps. The instructions to issued shall have the force of law.

19. The Supreme Court in *Union of India v. K. P. Joseph*[1] observed at page 304 :

"This Court has held in Sant Ram Sharma v. State of Rajasthan that although Government cannot supersede statutory rules by administrative instructions yet, if the rules framed under Art. 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

20. The Supreme Court in *The State of Uttar Pradesh v. Chandra Mohan Nigam*[2] observed :

> "It is not necessary to go into this aspect in detail in this case as to whether the instructions can be elevated to the status of statutory rules or even constitutional directions as found by the learned single Judge. It is sufficient for our purpose that these instructions do not violate any provisions of the Act or of the rules. Rule 16(3) being a rigorous rule vis-a-vis a Government servant not himself willing to retire under Rule 16(2) has to be invoked in a fair and reasonable manner. Since Rule 16(3) itself does not contain any guidelines, directions or criteria, the instructions issued by the Government furnish an essential and salutary procedure for the purpose of securing uniformity in application of the rule. These instructions, really fill up the yawning gaps in the provisions, and are embedded in the conditions of Service. These are binding on the Government and cannot be violated to the prejudice of the Government servant."

21. In the absence of any statutory rules on the question, administrative instructions contained in the aforesaid Office Memorandum are valid and, are therefore enforceable, unless they are violative of Art. 16 of the Constitution. Therefore, it is necessary to examine whether the instructions contained in the aforesaid Office Memorandum are violative of Art. 16 of the Constitutions. The question is whether an enquiry into the character and antecedents of a person for the governmental post amounts to denial of equal opportunity for employment. Character and antecedents or past history of a person ought no to be equated with or considered the same as political philosophy. Political philosophy by itself is not bad. Political philosophy is abstract, theoretical and hypothetical or visionary. It deals with generalization rather than particulars. Therefore, the Office Memorandum itself mandates that no person shall be considered unsuitable for employment solely because of his political opinions. What the Memorandum states is that care should be taken not to employ persons who are likely to be disloyal and abuse the confidence placed in them by virtue of their appointment. Who are the persons likely to be disloyal and abuse the confidence placed in them ? Answering the question, the memorandum states, persons who are actively engaged in subversive activities including members of any organisation, the avowed objects of which is to change the existing order of society by violent means should be considered unfit for appointment under Government. In amplification of this criterion, it was further pointed out that an individual may be considered unsuitable for public employment only on the ground of his actual participation in or association with any objectionable activity or programme. Therefore what is prescribed as a disqualification for employment is not the political opinion of the candidate. On the other hand, the Memorandum specifically states that mere political opinion shall not be a disqualification for appointment. What is prescribed as disqualification is active participation on the basis of his political thought in violent activity or programme.

22. The Supreme Court in *V. S. Menon v. Union of India* , pointed out :

> "Nowhere it is alleged that the appellant had taken any part in subversive activities by himself or along with others with whom he is said to have been associated. Taking interest in political activities of the Communist Party would not amount to taking part in subversive activities so long as the Communist Party continued to be a recognised political organisation which has not been banned. It cannot be asserted that simply talking with members of the Communist Party or associating with such members would amount to engaging in subversive activities. Subversive activity, in order to bring the person

> within the purview of the rule must amount to actively pursuing such activities as are calculated to subvert the Government established by law. No such allegations appear to have been made against the appellant."

23. Thus the Supreme Court pointed out that mere association with members of the Communist Party would not amount to engaging in subversive activities. But the question is, whether past history and character are relevant for the purpose of employment. A civil servant in a democracy in committed to public interest. Thee are numerous political parties in a democracy. A citizen may choose any political party and has utmost freedom to change and support the ideologies of another party that move him most. But the fulfillment of the policies of the political parties should conform to the Constitution. A civil servant must be a political. A self-discipline urges him to surrender his own volition or option. He is expected to remain steadfast, to higher purpose - the loyal discharge of the duties entrusted to him by Govt. He has to as carefully implement the policy for nationalization of industries, as he may in a changed situation reverse the process and undo it. They cannot carry their personal views actively into the sphere of administration and sabotage the schemes of the Government. Such persons are unsuitable to civil service. They are dangerous to be in any civil post. They are untrustworthy and are disloyal to say the least in discharge of their duty. The involvement of a civil servant in 'politics' should be intellectual and not emotional or physical. To talk politics is no sin. Mere political association is no crime. But what about a person who is an active member of a subversive organization whose avowed object is to change the society by violence ? If such a person is entered into service, there would be difficulty and damage to the smooth functioning of the Government. Therefore, it is open to the Government to judge the loyalty of a person by his previous conduct and history. No Government would like to take a person and later feel sorry for having done so when it is discovered that the candidate had sabotaged of or exploded their schemes. It is common knowledge that failure of numerous governmental activities are attributed to the lack of interest or hostility of public servants. How can then one expect the Government to take person into service who is already known to have been engaged in subversive activities against the Government ? The civil servant is expected to be non-political with commitment neither to political ideologies nor individual political leaders in the Government. Government and politics are synonymous although not identical terms. Every Government employee is engaged in the execution of the schemes, ideas and ideology of the political party in power. Political bias in the discharge of one's duty by a civil servant has to be frowned upon. If a civil servant has conscious objection to the provisions of the memorandum, the right course for him is not to seek employment. He has no business to seek entry into service and remain within the Government and act as a Trojan horse. What is the way of assuring loyalty to the Government before a person is employed in a civil post ? The only way of judging his loyalty is his past history and activity.

24. The Supreme Court in Wasi Udain Ahmed v. District Magistrate, Aligarah observed :

> "The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed, usually from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order."

Therefore, the only way in ascertaining whether a person seeking employment is likely to indulge in subversive activities or activity aimed at the organised breach or defiance of law

involved in violence can only be from past character and antecedent history of the period concerned. What is the nature of past conduct and antecedent history of the petitioner ? The report states that he was convicted under S. 25(1) (a) of the Indian Arms Act in C.C. 12 of 1970 by the Judicial First Class Magistrate on 23rd April, 1970 and was sentenced to undergo rigorous imprisonment for one year. It appears he was however, directed to be released on 5th February, 1979 under S. 562 Cr. P.C. on probation of good conduct. Immediately, after his release from jail he worked as Plain Area Organiser of the extremist party in Khammam Taluk by harbouring the under area cadres of the extremist party. Even by the date of report on 18th September, 1978 he was stated to be closely moving with P.D.S.U. and other sympathisers of the extremists like Vaddeli Krishna Murthy. He attended the State General Council meeting of the P.D.S.U. from 2nd July, 1978 to 5th July, 1978. These are not isolated antecedents of mere association. Is this chain of events not sufficient to ascertain whether the petitioner is likely to be a loyal servant ? In our opinion. these events are sufficient. The past conduct of the petitioner established that he has been actively participating in violent political activity. His is not a case of talking politics, but subversive political activity. His disloyalty to the Government was apparently pronounced. Therefore he was not considered suitable for a civil post.

25. Mr. Vedula Jagannadha Rao, learned counsel submits that the denial of employment on the basis of his past prejudicial conduct and antecedents of a person will amount to non-consideration of his application and therefore amounts to an infraction of Art. 16 of the Constitution. He placed reliance on the decision of this Court in Musku Anantha Reddy v. Government of Andhra Pradesh (1978) 1 An. W.R. 21. Madhava Reddy, J. (as he then was) held :

> "On the basis of his past association with the Civil Liberties Committee, it cannot be held that his character and antecedents disqualify him for appointment."

26. Another learned Judge, Chinnappa Reddy, J., (as he then was) in A. Rama Rao v. The Post Master General, Andhra Circle, Hyderabad was considering the question whether the discharge of the petitioner was based on a report from the Superintendent of Police to the effect that the petitioner was a member and active worker of the Student Federation of India and he also attended the Yuvajana Sangh meeting organised by Marxist Communist Party at Sattenpalli. In both these cases, the antecedents relate only of mere association with political parties and not active participation.

27. In a recent judgment of the Supreme Court in *State of Madhya Pradesh v. Ramashankar Raghuvanshi*[3] Chinnappa Reddy, J., observed :

> "It is a different matter altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity in order to find out his suitability for public employment. But why seek a police report on the political faith of a candidate and act upon it ? Politics is no crime."

In this decision also Chinnappa Reddy, J., observed that a person with criminal and subversive activities is not suitable for employment in Government service. The learned counsel also invited our attention to the decision of the Karnataka High Court in Narasimha Murthy v. State of Karnataka, 1979 (1) S.L.R. 53. That was a case where the case of the petitioner was not

considered for appointment although he was qualified under the Rules for the post. There it was rightly held that non-consideration of a case was an infraction of Art. 16(1) of the Constitution.

28. The Kerala High Court in K. Sadanandan v. The State of Kerala held :

> "The State Government was absolutely entitled to take the character and antecedents of the petitioners into account, because of the provisions contained in Clause (ii) of Sub-rule (b) of Rule 10 of the Kerala State Subordinate Service Rules."

29. In that case, the Service Commission had recommended the petitioners for appointment as probationary Sub-Inspectors of Police, but the State Government excluded their names from the list on the ground that on verification of their character and antecedents they were found unsuitable. To the same effect is the decision of the Kerala High Court in K. George v. The State of Kerala [1964-I L.L.J. 565]. The Kerala High Court in State of Kerala v. K. A. Balan 1979 (1) S.L.R. 95, pointed out that it was open to the State Government to take into account the character and antecedents of an applicant before he is appointed to Government service and that in assessing his character and antecedents, the State was not to proceed on arbitrary and irrelevant consideration and generally in this region of assessment the Court should not substitute its own assessment for those of the executive with rests the primary duty of appointment.

30. The Constitutional Law by John. E. Nowak, Ronald D. Rotunda and J. Nelson Young, states at page 798 thus :

> "Thus, the constitutional requirements involving loyalty-security qualifications for employment by either federal or state Governments parallel each other quite closely. An individual may not be punished or deprived of public employment for political association unless (1) he is an active member of a subversive organisation; (2) such membership is with knowledge of the illegal aims of the organisation; and (3) the individual has a specific intent to further those illegal ends, as opposed to the general support of the general objectives of an organisation."

The authors further observed at pate 795 :

"Adler v. Board of Education 342 US 485 (1952) the first significant venture of the Court into loyalty programmes, involved an appeal from the dismissal of a teacher pursuant to a New York statute which disqualified from civil service and public school employment any person advocating, advising or teaching governmental overthrow by force or violence. Appellant's claim that his freedom of speech and association has been infringed by the statutes was not deemed persuasive because employment was not considered to be constitutionally a "right", thus removing it from the spectrum of constitutional protection. As the majority opinion phrased it :"They (appellants) may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at libert to retain their beliefs and associations and go elsewhere."Thus the Court employed the then traditional view that public employment was a privilege rather than a right, illustrated by Mr. Justice Holmes' famous dictum ..... petitioner may have a constitutional right to talk politics, but he has no constitutional right to be policeman."

31. This is clearly a case of active participation of the petitioner in a subversive organisation. He was aware of the illegal aims of the organization. As observed by Holmes. J., he has right to talk politics and participate in it but he has no constitutional right to be a time-scale clerk.

32. We may now turn to the question whether the principles of natural justice could be invoked to seek communication of the reports relating to such past conduct and antecedents of a person. The learned Standing Counsel for the Central Government maintains that employment is a mere privilege but not a right that an applicant for a post has no particular claim to the post and, therefore, the principles of natural justice are inapplicable. Alternatively, he submits that the Office Memorandum itself specifically lays down that the police report shall not be communicated and since the Office Memorandum is a valid law, the principles of natural justice cannot supplant the law but can only supplement it.

33. To begin with on the topic we begin with the Texts on Administrative Law. In the Natural Justice by Paul Jackson, the author observed at page 118 :

> "There is authority for the proposition that as body need not observe the rules of natural justice where its decision, although final, relates not a right but to a privilege or licence. This distinction is popular with the Courts when they wish to narrow the scope of natural justice."

34. S. A. de Smith in the text book, Judicial Review of Administrative Action. Third Edition, observed at page 161 :
"Parliament may by apt words expressly dispense with the need for notice or hearing although it is prima facie requisite. It may permit enforcement powers against persons and property to be exercised ex parte. In the interests of administrative efficiency and expedition it has excluded the operation of the rule, wholly or in part, in various other contexts, as by enabling decision makers to hold undisclosed ex parte consultations or to refuse a hearing to an interested party or to decline to entertain particular kinds of objections or representations."

35. In *Breen v. Amalgamated Engineering Union*[4] Lord Denning M.R. at page 191 observed :

> "If a man seeks a privilege to which he has on particular claim - such as an appointment to some post or other - then he can be turned away without a word. He need not be heard. No explanation need be given : see the cases cited in *Schmidt v. Secretary of State for Home Affairs*[5]*."*

36. In *Smt. Maneka Gandhi v. Union of India Bhagwati, J.*, observed at pate 629 :
"The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.' Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism the audi alteram partem rule would by the experimental test, be excluded, if importing the right to be heard has the effect of paralysing the administrativee process or the need for promptitude or the urgency of the situation so demands."

37. Again the Supreme Court in Malik Singh v. State of Punjab and Haryana held :

"History sheets and surveillance registers have to be and are confidential documents. Neither the person whose name is entered in the register, not any other public can have access to the surveillance register. The nature and character of the function involved in the making of an entry in the surveillance register is so utterly administrative and non-judicial that it is difficult to conceive of the application of the rule of audi alteram partem. Such enquiry as may be made may necessarily to be confidential and it appears to us to necessarily exclude the application of that principle. In fact observance of the principles of natural justice may defeat the very object of the rule providing for surveillance. There is every possibility of the ends of justice being defeated instead of being served."

38. In Union of India v. J. N. Sinha [1970-II L.L.J. 284] Hegde, J., held :

> "As observed by this Court in Kraipak v. Union of India , "the aim of rules of natural justice is to secure justice or to put it negatively to present miscarriage or to put it negatively to present miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it."

39. What the petitioner seeks is an appointment to the post of a time-scale clerk. What he seeks is only a privilege. There is no particular claim to the post. His right is only a right to be considered along with the other qualified applicants. Therefore he has no right to be heard. He need be furnished no explanation for not appointing him. The Office Memorandum dated 1st August, 1975 mandates that the surveillance reports should not be divulged to the employee nor should the nature or substance of the reports received from the police be communicated under any circumstances to the employee. So the surveillance report is a confidential document. Right to be heard would paralyse the administrative process. What is more - the Office Memorandum has the force of law in the absence of any statute or rules. The rules of natural justice do not supplant the law but only supplement the law. Therefore, the principles of natural justice are inapplicable to the reports sought for under the Office Memorandum dated 27th September, 1967.

40. Mr. Jagannadha Rao, the learned counsel for the petitioner submits that the Office Memorandum is not based on any valid principle and is irrational and unreasonable and therefore is violative of Art. 14 and 16 of the Constitution. He invited our attention to certain passages in the texts of Administrative Law and Precedents. H. W. R. Wade on Administrative Law, Fourth Edition, says at page 459 :

> "Where a police officer was compulsorily retired after being examined by a medical officer, chosen by the police authority, the Court of Appeal held that natural justice had been violated because the police officer's own doctor had not been allowed to see the report of an enquiry and a medical report made to the police authority, though it was also held that these need not necessarily be disclosed to the police officer himself."

Again in the same book at page 460 under the heading, 'Limits to the right to see adverse evidence' the author says :

> "The extent of the disclosure required by natural justice may have to be weighed against the prejudice to the scheme of the Act which disclosure may involve. In a leading case the

Court of Appeal applied these considerations to the procedure of Gaming Board in granting certificates of consent to persons wishing to operate gaming clubs. It was the Board's duty to investigate the credentials of applicants and to obtain information from the police and other confidential sources. Such sources, it was held need not be divulged if there were objections properly based on the public interest. *See R. v. Gaming Board for Great Britain*[6] "

41. In Administrative Law Text by Kenneth Culp Davis, 3rd Edition, the author at page 181 says :

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injured an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."

42. In Administrative Law, cases and comments seventh edition by Walter Gellhorn, Clark Byse and Peter D. Strauss the authors observed at page 420 :

"In other cases, however, the 'dueness' propriety or legality of the procedure never became an issue because the interest the plaintiff sought to protect was held not to be property or liberty. The judicial dichotomy was that "rights" were protected but "Privileges" were not."

43. In Shri Son Pal v. The General Manager, Northern Railway 1974 Lab I.C. 529, the Delhi High Court held :

"A candidate who has been selected on merits has a right to expect that he would be appointed on such selection. Before his expectation is defeated on some other ground, it is only just and proper that he should be heard in respect of such other ground. It is true that the past record of the candidate is known to him. But even then, the candidate may be able to explain why it should not bar him from the appointment or why it is not relevant to operate as a bar or, at any rate, that it should not operate as a bar for too long a time."
In that case the petitioner was already in service. He applied for the post of Law Assistant in the Northern Railway in response to an advertisement by the Railway Service Commission. He was interviewed by the Railway Service Commission and he was selected for appointment to the post of Law Assistant subject to his being found suitable in all respects. The appointment was withheld on the ground of unsuitability. The learned Judge held that "the Divisional Superintendent having forwarded the application of the petitioner for the post of Law Assistant was not justified in not permitting the petitioner to take up the post of Law Assistant without informing the reason therefor." The learned Judge however, held that the Railway was justified to take into consideration the past record of service of the petitioner. This was a case of a person who was already in service. Therefore, we do not think that the decision is of any assistance to the learned counsel on the fact of this case.

44. "*In Swadeshi Cotton Mills v. Union of India* , the Supreme Court observed at page 828 :

"The rules of natural justice can operate only in areas not covered by any law validly

made. They can supplement the law but cannot supplant it. (Per Hegde, J., in K. K. Kraipak, ibid) . If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the Court cannot ignore the mandate of the Legislature."

45. In this case, the Office Memorandum validly made, explicitly excluded the communication of the verification reports. The rules of natural justice cannot operate in an area covered by any law validly made. We accordingly hold that the Office Memoranda dated 27th September, 1967 and August, 1975 are not violative of Arts. 14 and 16 of the Constitution.

46. We would hasten to add that, that does not mean that the verification reports are protected against judicial scrutiny to hold the balance and the final decision with regard to the validity of any objection against disclosure raised under S. 123 of the Indian Evidence Act must always be with the Court. As observed by Bhagwati. J., in S. P. Gupta v. Union of India 1981 (Supp.) S.C.C. 83, at page 273 :

"It is axiomatic that every action of the Government must be actuated by public interest but even so we find cases, though not many, where governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes government action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open Government with means of information available to the public, there would be greater exposure of the functioning of Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open Government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency."The learned Judge further observed that there is a residual power in the Court to inspect the document if the Court finds it necessary to do so for the purpose of deciding whether on balance the disclosure of the document would cause greater injury to public interest than its nondisclosure.

47. Lord Denning in his book "What next in the Law" at page 232 said :

> "In holding the balance .... it is very important in the public interest that confidential reports should not be disclosed. Not only would their disclosure be a gross breach of faith with the makers of them, but once the subjects of the reports got to know of the disclosures, it might lead to much disturbance and unrest."

The Court in exercise of its extra-ordinary jurisdiction under Art. 226 of the Constitution has ample power to check arbitrary Governmental action by political or other motivations and pressures and undo injustice.

48. The petitioner, further admittedly, has been convicted for a criminal offence. No doubt he was released under S. 562 Cr. P.C., on probation of good conduct. But the stigma attached to the

conviction is not obliterated by the release of the petitioner under S. 562 Cr. P.C. The stigma attached to the conviction continues. The Supreme Court in The Divisional Personal Officer, Southern Railway v. T. R. Challappan , after referring to the several provisions of Probation of Offenders Act observed at page 222 :

"These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals ..... This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing that offender on probation. Under Ss. 3, 4 or 6 of the Act, the stigma continues and the finding of the misconduct resulting in a conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction."

49. Thus, it is clear from the aforesaid ruling of the highest Court of the land that the release of the offender under S. 12 of the Probation of Offenders Act does not automatically obliterate the stigma of conviction. Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules empowers the disciplinary authority to make an order as it deems fit, on the ground of conduct of a Government servant which leads to his conviction on a criminal charge. But the learned counsel for the petitioner submits that there is no rule debarring a person from seeking employment on the ground of conviction on a criminal charge and therefore, any conviction cannot be taken into consideration for the denial of employment. But the office memorandum clearly says that the appointing authority should make prior verification of the character and antecedents about a candidate for determining the suitability to a civil post. The conviction is undoubtedly a bad antecedent of a candidate. If a conviction criminal charge is a disqualification for a person to continue in employment, a fortiori it is a disqualification for selection to any civil post. However, we feel it is not only desirable but proper that rules prescribing disqualifications for appointment to a civil post under the Central Government are made under Art. 309 of the Constitution.

50. The power under Art. 226 of the Constitution is transcendental in nature. Its omniscence to undo justice is incontrovertible. This Court will undoubtedly be duty bound to interfere to set right manifest or substantial injustice. (See Veerappa v. Raman, 1952 S.C.R. 583).

51. Under Art. 51A of the Constitution it is one of the fundamental duties of a citizen to safeguard public property and to abjure violence. A person involving himself in violent activity is undoubtedly not a person suitable for Government service. Such a person is one who overlooks his duties to the Community and involves in acts of violence. A citizen is expected while exercising and enforcing his fundamental rights to be equally conscious to perform the duties imposed by Art. 51A of the Constitution. A person who violates his constitutional duties is not entitled for the enforcement of his legal rights, Salmond on Jurisprudence. Twelfth Edition, observes at page 220 :

> "The question has been debated whether rights and duties are necessarily correlative. According to one view, there can be no right without a corresponding duty, or duty without a corresponding right, any more than there can be a husband without a wife or a father without a child. For, on this view, every duty must be a duty towards some person or persons; in whom therefore, a correlative right is vested."

52. Thus the rights and duties are correlative. Therefore, Court would be justified in refusing discretionary relief to persons who are found to have violated the fundamental dues which are founded on moral values. The Courts are entitled to look at the duties too while interpreting the ambit of fundamental rights. The Universal Declaration of Human Rights adopted by the General Assembly on 19th December, 1948 provides in Art. 29 that "every one has duties to the community in which alone the free and full development of his personality is possible. Under Clause (2) "everyone shall be subject only to such limitations as are determined by law solely for the purposes of securing due recognition and respect of the rights and freedoms as of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." A person who does not behave to just requirements of morality, public order and the general welfare in a democratic society ought no to be entitled to enforce his rights if any under Art. 226 of the Constitution.

53. In the result, the order of the learned Single Judge is set aside and the writ petition is dismissed. There shall be no order as to costs.

Dated 22nd April, 1983.

Ramaswami, J.

54. In the judgment, my learned brother has proposed to allow the writ appeal resulting in dismissal of the writ petition on the grounds that (1) the petitioner had only a privilege to apply for appointment to a civil post under the State and that his claim was considered; (2) the office memorandum supplements the rules and has statutory force; (3) it expressly excluded the application of the principles of natural justice; and (4) the contents of the report of the Superintendent of Police not only mentions the circumstances leading to the conviction in a criminal case but also his subsequent participation in subversive activities and that there is no need to disclose them and the Court has power to scrutinize the reports to find out whether it is vitiated by motivation, and they are sufficient grounds to hold that the petitioner is not likely to be loyal to the Government. I have gone through the judgment proposed by my learned brother very carefully and given my anxious thought. In my humble view, it may tend to sow the seeds to whittle down the efficacy of equality clause enshrined in the Constitution. This impelled me to express my inability to persuade myself to concur with my learned brother except to the ground of admitted previous conviction. Since there is no enough time to render my judgment and express my views, I propose to give my reasons later in a separate judgment. My learned brother rested his conclusion on one of the circumstances, viz., that the petitioner admitted that he was convicted by a criminal Court for participation in subversive activities and that the release of him on probation of good conduct under S. 562 Cr. P.C. does not obliterate his criminal misconduct and that it disentitled him for seeking appointment to a civil post. This point was not argued before our learned brother, Jeevan Reddy, J. and to be fair, he did not have the advantage of considering this point, but being question of law, we heard on this point. This is the only reason

on which I agree with my learned brother and concur to allow the writ appeal and dismiss the writ petition. Accordingly, the writ appeal is allowed and the writ petition is dismissed.

55. In my order dated 22nd April, 1983. I have stated that I would give my reasons later on for the result I reached and I set forth the reasons as under :My learned brother has stated in detail the facts of the case. I deem it redundant to restate once over all the facts. To make my point clear and the reasoning to be receptive, I would like to state a few essential facts. In my judgment, I refer the array of parties as obtained in the writ petition.
The petitioner, a Graduate in Science, in response to an advertisement issued by the first respondent, sent his application seeking appointment to the post of time-scale clerk. He appeared for the selection on 12th April, 1978. Along with three others, he was selected and was put in the selection list. He was called upon to furnish the necessary information in the prescribed proforma with respect to his character and antecedents. Thereunder, he disclosed that he was convicted for an offence under S. 25-A of the Indian Arms Act and gave the particular and the result in appeal and that the High Court, on revision, releasing him on probation of good conduct. Thereupon, an enquiry was got done by the respondent through the police. The Collector, Khammam, in his letter dated 18th September, 1978, apart from stating the conviction admitted by the petitioner, alleged that the petitioner participated in organising Dalams in the plain area, etc., the details of which have been extracted in the judgment rendered by my learned brother. Placing reliance thereon, the petitioner was denied of the appointment. These are the undisputed facts. In the writ petition filed by him, our learned brother, Jeevan Reddy, J. held that the denial of appointment was illegal and unconstitutional. It was also held that the order does not preclude the respondents, if they so choose, to call upon the petitioner to explain and meet the allegation No. 11 of the Collector's report and to decide the question of the petitioner's appointment after arriving at a decision on the said allegation according to law. Accordingly, he allowed the writ petition.

56. Sri Subrahmanya Reddi, learned senior standing counsel for the Central Government contended that the petitioner has no fundamental right to appointment to a post under the State. He has got only a right to be considered. The petitioner does not have any right, interest or legitimate expectation thereof. At the most, it is only a privilege. His case was considered on merits and he was denied appointment on the basis of the adverse report sent by the Collector, Khammam. The Office Memorandum referred to in the judgment of my learned brother in extenso excludes divulging the contents of the report. Therefore, the petitioner is not entitled to any opportunity of hearing. The conviction by a Criminal Court is a disqualification. Though the petitioner may indulge in and have his faith in a particular political philosophy, but if he is to be indulging in subversive activities, he is disqualified for appointment under the State though there are no statutory rules in this regard, since a Government servant while in service, if convicted by a Criminal Court and that itself is a ground for dismissal from service under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, on a parity of reasoning, a new entrant on conviction, is disqualified for being appointed. In support of these contentions, he relied upon several decisions, which, to avoid repetition, I would refer to them at the appropriate stage.

57. Sri Vedula Jagannadha Rao, learned counsel for the petitioner, on the other hand, contends that though he does not dispute the contention of the respondents that the petitioner has no fundamental right to an appointment, but before denying him the appointment due to adverse

report obtained behind his back, he is entitled to a hearing, a facet of the principles of natural justice. In this case, admittedly, that was not adhered to. He further contends that the Office Memorandum dated 27th September, 1967, does not expressly or by necessary implication exclude the application of the principles of natural justice. The Office Memorandum dated 21st August, 1975, does not apply to the petitioner. It apples only to the personas already in service. Even otherwise they are violative of Art. 16(1) of the Constitution. He submits that the petitioner, though having faith in a particular political philosophy, to eradicate the ills in the society and to establish socialism he did not indulge in any subversive activities. The conviction is based on fabricated evidence and that the petitioner has sufficiently explained the same in his statement made in the proforma. The denial thereby smacks of the principles of natural justice. He further contends that the release of the petitioner on probation obliterates the conviction. Therefore, if cannot be relied upon. The conviction disentitled the petitioner for appointment, was not agitated specifically before the learned single Judge. He relied upon several decisions in support of his contentions which would be referred to at the appropriate stage. Sri Subhrahmanya Reddi, in his reply has reiterated all his contentions while negativing the contentions of Sri Jagannadha Rao.

58. Upon these respective contentions, the questions that arise for consideration are : What is the right the petitioner acquired on the facts in this case : and whether the learned single Judge is justified in directing the respondents to give an opportunity to the petitioner if the respondents chose to rely upon paragraph No. 11 of the offending report ?

59. Undoubtedly, on an advertisement calling for applications from qualified persons for appointment to the post of time-scale clerk under the first respondent, the petitioner offered himself to be one of the candidates for appointment. The respondent has got to select competent persons fulfilling the qualifications. The principle of recruitment by open competition aims at while ensuring equality of opportunity in the matter of employment, the right of the State to obtain the services of the most meritorious candidates. It is an indisputable fact that in our ancient democracy unemployment is rampant and for few posts advertised, several persons submit their applications. Post-Graduates or double Graduates are working as clerks and Graduates as police constables and few Graduates or under-graduates are plying rickshaw-cycles to eke out their livelihood. In the existing conditions only few are to be selected from many. So, mere submission of an application for a post, does not by itself create any right to the post in the candidate. But he has a right that his claims are to be considered for the post objectively and dispassionately.

60. Sri Subrahmanya Reddy, learned counsel for the respondents, in support of his contention that the petitioner has no right to an appointment, relied *upon S. Ramaswamy v. Union of India*[7]N. M. Siddique v. Union of India (supra), The State of Haryana v. Subhash Chander Marwaha (sup.ra) and Mrs. *Kunda v. Maharashtra Public Service Commission*[8] He further relied upon, for the preposition that the petitioner has no fundamental right to an appointment but has a right to be considered, Krishan Chandra v. Central Tractor Organisation (supra) and High Court, Calcutta v. Amal Kumar Roy (supra). These propositions were not fairly contested by Sri Jagannadha Rao. Therefore, it is unnecessary to advert to these decisions, but suffice to restate by making an application for an appointment, the candidate does not acquire any right to the post. He has got a right to be considered fairly and objectively, as per procedure on the basis of the relevant material relating to qualification, furnished by him. Article 14 read with Art. 16(1) of the Constitution provides that every citizen shall have equality of opportunity in matters relating to

employment or appointment to any office or post under the State and the State is enjoined that it shall not deny to any person equality before the law and a citizen shall not be discriminated on any grounds of religion, caste, etc. subject to Art. 16(4) of the Constitution. It is a guarantee to each individual citizen. Therefore every citizen seeking employment or appointment to an office or post under the State is entitled to be afforded an opportunity for seeking such employment or appointment. It is contended by Sri Subrahmanya Reddy that a person who submitted an application for appointment does not acquire any right, interest or legitimate expectation of an interest in an appointment and at the most, would be only a privilege. Therefore he cannot claim as a matter of right to be heard before denial of appointment. In support thereof, he relies upon Breen v. Amalgamated Engineering Union and Schmidt v. Secretary of State, Home Affairs 1969(2) Ch.D. 149. Though the learned counsel for the respondent did not seriously dispute this proposition specifically, but asserted that the petitioner is entitled to an opportunity of hearing. The question thus emerges for decision in this case is that since the petitioner was already selected along with three others and was put in the selection list, what is the position the petitioner occupied, is the question. Does it create a right or interest or legitimate expectation of an interest generating a hope to be appointed and if so whether the respondents have power to believe the same on the basis of the material gathered behind his back without giving an opportunity ? These questions have to be broached from the perspective of the goals envisaged under the Constitution of India.

61. Preamble to the Constitution : In statutory constructions, the explicit language in the section is the indicia to consider its scope and sweep and its width cannot be cut down by any process of reasoning. The redressal for its consequence lies elsewhere. But where an ambiguity lurks in, the preamble, the historical background and the facts and circumstances leading to enact the statute of which the Court could take judicial notice of, are some of the sources to discern the goals set out by the Legislature to accomplish. This construction would apply to construe the constitutional provisions as well. Therefore, in view of the facts of this case, contentions raised and points arise for decision, it is pertinent at the threshold to take notes of the goals set out in the preamble to the Constitution.

62. The people have given into themselves the Constitution. They constituted India into a Sovereign, Socialist, Secular Democratic Republic. They resolved that Justice, Liberty, Equality and Fraternity are the four corner stones to restructure its Republic. It assures to its citizens to secure Justice - social, economic and political; Liberty of thought etc.; Equality of status and of opportunity and to promote Fraternity among them all assuring dignity of the individual and the unity and integrity of the nation. In fulfillment thereof, Part III of the Constitution assures the right which are fundamental to the citizen/person and Part IV provides certain certain fundamental principles as State policy. On a reading of the preamble. Part III and IV of the Constitution together, it is apparent that the founding fathers intended to usher in an egalitarian society where every citizen is assured of social and economic justice, equality of status and of opportunity assuring his dignity of person. Justice and Equality, the two "priceless jewels" occupying pride of place are thus embedded as corner stones to restructure an egalitarian socialist Republic.

63. In the words of Justice K. Subba Rao in his "Fundamental Right under the Constitution of India", Right Hon'ble Sri V. S. Srinivasa Sastry's Memorial Lecture at page 6 that :

"It (preamble) directs (I state ordains) the State to bring out social order in which Justice - social, economic and political shall inform of all the institutions of national life. It enjoins on the State to bring out an egalitatarian state where there are equal opportunities to all ..... where there is social justice ...."

64. Granvelly Austin in his "Indian Constitution Cornerstone of the Nation" 1972 Edition at page 50 states that :

"The Indian Constitution is the first and foremost a social document either directly aimed at furthering the goals of social evolution or attempt to foster this evolution by establishing conditions necessary for its achievement."

65. Chief Justice Hidayatullah, in his "Firoz Gandhi Memorial Lecture" - Key note of our Constitution (12th September, 1968) as quoted by Justice Jaganmohan Reddy in his "Social Justice and the Constitution" Sir Alladi Memorial Lectures, at page 14 that :
"The Fundamental Rights and legal ends to be served by the State and the Directive Principles are the moral ends to be observed by the Government. The Fundamental Rights represent the social claims of men and their recognition creates a transcendental sanction."Justice Jaganmohan Reddy, in the same book, states :

"Economic Justice is to be achieved by attempts to establish a decent standard of life and to obtain living wage for all workmen, to create equality in the means of livelihood for men and women."At page 25, he posits that "The Constitution is flexible enough to provide for social justice and Welfare State."

Social Justice is a comprehensive term though its origin is obscure including economic justice. Considering Social Justice in that light, it has to be accepted that there is a greater accent on freedom from want and starvation, as stated by justice. A. U. Kuppuswami in his Presidential Remarks on Dr. Alladi Krishnaswami Memorial Endowment Lectures," at page 77 of the same book.

66. It may be relevant to mention that while the debates in the Constituent Assembly were going on, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations Organisation on 10th December, 1948 where under Art. 21(2) declared that :

"Every one has a right to equal access to public services in his country."
Article 22 envisages that :-

"Every one, as a member of the Society has a right to social security and is entitled to realisation through national effort and international co-operation and in accordance with the organisation and resources of each state of the economic, social, and cultural rights indispensable for his dignity and the free development his personality."

67. The preamble is not a mere pious platitude, a solemn declaration of ideals and aspirations of people. Thus, Fundamental Rights are primordial rights necessary for the citizen to enable him to chalk out his own career in the manner he likes best and in that pursuit, "The doctrine of Equality" as "bastion" was ascribed its transcendental position in constitutional schemes. Articles

14, 15 and 16 part III of the Constitution form part of the Code of "Equality" of which Art. 14 is the genus and Art. 16 is its specie supplementing each other to realise "equality of opportunity" in matters relating to employment or appointment to any office or post under the State.Role of the State and Social Justice.

68. The concept of a modern democratic State is an instrument of social welfare striving to secure the greatest good to the greatest number was evolved from the principles of equality and liberty. Equality was in the course of time translated to a more ambitious plane of equality of status and opportunity in matters - social and economic and distinct from purely political equality and voting rights. The State assumed to itself to secure for its citizens social justice and the attribute of equality in a purely protective sense got translated into equality in the realisation of social justice as an index of a democratic society. (Justice J. C. Shah in his "Rule of Law and the Indian Constitution", 1972 Edition of Sir Dorab Tata Memorial Lectures, at page 13).

69. Justice Jaganmohan Reddy in his "Social Justice and the Constitution" at page 8 states :

"The concept of social justice has now gone beyond what the ancients could possibly have contemplated. It now take the form of.. equalisation of employment opportunities many other things."

At page 2, he states :

"There are two aspects of social justice. The first one is that every one has equal rights to basis equality compatible with similar liberty of others; and the second one is that social and economic inequalities are to be adjusted in such a way they are both reasonably expected to be to everyone's advantage and attached to positions and office open to all both these aspects depend greatly upon the kind of structure of society which we have and which we envisage.Justice K. K. Mathew in his "Democracy, Equality and Freedom" at page 47 states that :

> "Welfare State exists not only to enable the people to take out their livelihood but also to make it possible for them to lead a good life."

J. W. Evans and L.R. Ward in "Social and Political Philosophy of Jacquies Maritain" 1956 Edition, at page 101 state that :

> "The State exists and its only title to exist is claim to advance the public good and secure the public interest ..."

Today the State has to be viewed mainly as a service corporation. If we clearly grasp the character of State as a social agent understanding it rationally as a form of service and mystically as an ultimate power ... we shall differ only in respect of the limits of its ability to render service. (Mac. Iver, in his "The Modern State" at page 183). "Welfare State" emphasised by Bearnard Schewartz in "A Commentary on the Constitution of the United State of America" Volume 2, under Rights of persons, Chapter 18 at page 872 that :
"(State) is distinguished by its distribution of economic benefactions to persons and classes in community. Increasingly people are coming to live on largesse dispensed by Government. Government is coming to represent the primary the primary source of income and other

economic benefits."The Supreme Court of the United States of American in *Allgaver v. State of Louisiana*[9] has held that :

"A citizen has a right to earn his livelihood by any lawful calling to purpose any livelihood or avocation and for that purpose to enter into all contracts which may be proper necessary and essential in his carrying out to a successful conclusion of the purposes above mentioned. In the privilege of pursuits in an ordinary calling or trade and of acquisition, holding and selling property must be embraced the right to make all proper contracts in relation thereto."

70. It is therefore legitimate to conclude that the State is an organisation to transcend all sections of the society to enable them to lead good life assuring dignity of person under a legal order. Thus, its true dignity comes not from its power and prestige but from doing justice to its subjects.

71. Privilege Theory : Whensuch are the goals of an egalitarian society which the founding fathers of the Constitution are seeking to achieve to the people of India, we have to consider the scope of the right accrued to the petitioner who has been selected by the respondents for appointment as time-scale clerk. A citizen gets full development of his personality and thereby the assured dignity from sustained economic status and viability. It is a reality that middle class, lower middle class and the poor constitute majority population of the country. They impart education to their children at great sacrifice of their minimum comforts or bare sustenance or state benefaction with an expectation that their children or acquiring minimum educational qualifications could secure employment under the State and assist the family or bring up his brothers and sisters. To them employment under the State is an absolute necessity. Court could take judicial notice of these facts. Article 38(1) enjoins the State to strive to promote the welfare of the people by securing and protecting and effective social order in which justice, social, economic .... shall inform all institutions of material life and in particular endeavour to eliminate inequality in status, facilities and opportunities (Articles 38(2); to secure the right to an adequate means to livelihood (Art. 39(a); right to work (Art. 41); with special emphasis to weaker sections and in particular Schedule Castes and Schedule Tribes, etc. (Article 46). "Majority of its (Constitutional) provisions are aimed at furthering the goals of social revolution by establishing the conditions necessary for its achievement" held by Chandrachud, Chief Justice, in Minerva Mills Ltd. v. Union of India , Law should serve as a cutting edge of progress. "To encourage progress in the Society," held by Frankfurter, J, in *Charles Kevacs v. Albern Cooper*[10] that :"It is important to protect those liberties of the individual which history has attested as indispensable conditions of an open as against a closed society."These principles and the aspirations aroused in the people are to be kept at the back of our mind while considering the privilege theory and to gauge whether the citizen is right to expect that the principle of equality does assure that the concept of privilege is its penumbra. In that context the question then arises is : Does it create any right, interest or legitimate expectation of an interest or a mere privilege without any of these concomitants as contended for by the respondent. In this context, it is to be noticed that Art. 12 of the Constitution defines "State" to include the Central or the State Government, the respective Legislatures and all local or other authorities within the territory of India under their control. The State, in implementation of the Directive Principles adumbrated in Part IV undertakes diverse welfare activities and as a result, has established various Corporations - statutory as well as those created under the provisions of the Companies Act or the Co-operative Societies Act, etc. who have been carrying on business of public importance or welfare activities as delegates of the State as part of its sovereign functions and the State has control over them. In several cases, the

State itself has been carrying on those activities as part of its welfare programme. Therefore the concept of "State", is wide enough to embrace within its scope all those local authorities, Corporations or other authorities. The State has delegated its power of recruiting persons to the posts or offices under the State or local authorities or other authorities as per the provisions of, either the statutory rules or regulations or orders or bye-laws or notifications instructions having the force of law. Thousands of people are being employed under the Government - Union and States, local authorities and other authorities. Therefore, today for a large number of people, Government is the direct source of income although they hold no right. Their eligibility arises from being citizens of India. The State is thus, a regulator, dispenser of benefactions and a mass employer. To them the reach of the door steps of the "power houses" let alone to tap is intractable and inaccessible. The need of equal protection to them is felt most acute.

Privilege is a Right :

72. The concept of privilege received considerable attention and thought at the hands of eminent writers on Constitutional Law in allied jurisprudence in United Kingdom, United States of America and continental countries. Therefore, it would be profitable to travel to those fertile areas and see how the theory of privilege was nurtured and applied. Charles A. Reich in his "The New Property" reported in 1963-64, 73 Yale Law Journal, page 733 and 734 states that :

> "Today more and more of our wealth takes the form of right or status; rather than of tangible goods. An Individual's profession or occupation is a prime example. To may the job with a particular employer is the principal form of wealth as it is far more valuable than a house or bank account, for a new house can be bought, and a new account opened once the profession or a job is secured."

Therefore, the State, in its manifold activities as regulator, dispenser of benefactions and mass employer, has been its largesse like contracts, licences and jobs offering opportunity for appointment to a post or office under the State. A citizen expects to ameliorate his economic position by seeking an appointment or employment under the State. Thus arises the need base to a citizen to secure appointment or employment to an officer or post under the State. The thrust of equality clause, assuring equality of opportunity in the matter of appointment or employment to an office or post under the State has thereby become the arch string in his bow.

73. Charles A. Reich in his "The New Property" has stated that the Government is gigantic syphon. It draws in revenue and power and pours forth wealth; money, benefits, services, contracts, franchises and licences. Government has always had this function. But while in early times it was minor, today distribution of largesse is a vast imperical scale. This gives control to the Government or their agents on the lives of many people. The State has an imperative duty to see that all essentials of life are made available to all persons. The task of the State is to make possible the achievement of good life, both by removing obstacles in the path of such achievements and in assisting person in realising his ideal of self-perfection.

74. In Ramanna v. International Airport Authority of India , Bhagwati, J. stated on behalf of the Court that :

> "Today with tremendous expansion of welfare and social service functions increasing

> control of material and economic resources and large scale assumption of industrial and commercial activity by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which the ordinary citizen comes into relationship of direct encounter with State power-holders."

75. Same is the view taken in M/s. Kasturi Lal v. State Jammu and Kashmir (A.I.R. 1980. S.C. 1628).

Charles A. Reich in his "New Property" has stated that :

> "In a very real sense, in such a society the benefits received by the individual from the State will represent but his rightful share in the commonwealth itself. Only by transforming such benefits into "rights" will law achieve the goal of providing a secure minimum basis for individuality and dignity in a society where man will have virtually lost the ability to be master of his own economic destiny."

76. Bernard Schewartz, in his "A Commentary, of the Constitution of United States of America," in Volume II, Part III, Chapter 20, under S. 584 to 586 at pages 871 to 884. "Rights of the person, Equality, Belief and Dignity", dealt with the role of the welfare State vis-a-vis the rights of the person. He states that in the welfare state, it has undertaken several protective measures to assure rights to the persons in distributing its largesse whether it be a job, a pension, welfare aid, veteran's disability benefits, the Government contracts or any other benefits to which the individual has no pre-existing right. These are all in the nature of privileges or gratuity. Under the existing law, the individual concern has no legal right to which he is not entitles to receive except upon the terms and conditions laid down by the State. To call something a mere gratuity or privilege is to imply that it can withheld, granted or revoked at the pleasure of the governmental donor. A larger power to grant privileges or benefits implies that there is a lesser power to grant subject to any terms and conditions it may choose to impose. If that power is concluded then the logical consequences that would follow is that the State may completely withhold the benefits without any reason if the person does not accept the conditions. If these largesse or benefactions are considered merely as a privilege, Bernard Schewartz visualises that most disturbing consequences would ensue to the persons receiving them. The State would compel a citizen even to forgo his rights guaranteed under the Federal Constitution for the sake of receiving largesse from the State. He graphically describes thus :"Practically speaking to exercise his constitutional rights, it the benefactions which he receives are considered only a privilege remains theoretically free to exercise any of his constitutional rights; but he will know that the price of free exercise will be the risk of economic loss and even the loss of livelihood."
He argues that :

> "In a society in which the public fisc is in one way or other coming to be the principal source of economic support, it is essential that the law transforms the public benefit from a mere privilege to something held as of right. Perhaps in an early day when the scope of the Governmental action in the field of benefaction was much narrower it was not unreasonable to treat the recipients of the State largesse as a mere donee of privileges which might be granted or revoked on any conditions which the Government choose

> impose. The same is no longer true in a society in which more and more persons are becoming dependent upon the public purse and which is, in fact, evolving towards a stage in which the economic existence of well nigh the entire community will turn upon their relationship to the Government."

He concludes that :

> "In a society towards which we are moving the largesse dispensed by the State will be based upon recognition that the economic dependence of the individual is caused by forces far beyond his control ... In such a situation, the society itself will have to fill in the gap, if human values themselves are to be preserved. The aim of the benefits conferred for the purpose will be to preserve the economic sufficiency of the individual and to allow him to remain a valuable member of the community."

To preserve "modicum of dignity of person", he pleads for procedural safeguard to fair play.

77. Charles A. Reich in his "New Property" at page 779 states that :

"The power to dispense benefits may be not be used to buy up rights guaranteed by the Constitution. Government may not, in other words, impose any conditions on its largesse that would be invalid if imposed on something other than a mere privilege."Justice Mathew, in his "Democracy, Equality and Freedom" at page 39 states :

"It must now be recognised that we are becoming a society based upon relationship and status ..... Status driving primarily from source of livelihood. Status is so closely linked to personality that destruction of one may well destroy the other. Status must, therefore be surrounded with the kind of safeguards once reserved for personality. Eventually, those forms of largesse which are closely linked to status must be deemed to be held as of right."

Douglas J. in Barsky v. Board of Regents (1954) 347 U.S. 442, held that :

> "The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property ... To work means to eat. It also means to live. For many it would be better to work in jail than to sit idle on the curb. The great values of freedom are in the opportunities afforded to man to press new to horizons to pit his strength against the fores of nature to match skills with his fellowmen."

78. In Corpus Juris Secundum, Volume 72, at page 951, the word "Privilege" has been defined to mean as used in its broad and comprehensive sense "an advantage". At page 953, it is stated : "It has been stated that granting of a privilege may confer a right to hold public office is a privilege."

Unconstitutional Conditions are Void.

79. The Supreme Court of the United States has considered in several decisions the privilege vis-a-vis the rights guaranteed under the Federal Constitution and held that a citizen cannot be made to deny the privilege in defeasance of the constitutional guarantee.

80. The salvaging principle of unconstitutional condition was set in motion by Sutherland, J. in Frost v. Railroad Commission (1925) 271 U.S. 583. The facts were that private carriers were required to obtain certificate from the Railroad Commission for the privilege to use public road upon such terms and conditions as prescribed under the Transportation Act of California, 1917. It was contended that the private carriers were in effect converted into public carriers without due process of law and compensation, violative of their constitutional right to trade. While upholding that contention, Sutherland, J. speaking for majority, at page 593-594 held that :

> "It would be a palpable incongruity to strike down an act of state legislation which by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution but to uphold an act by which the same result is accomplished under the guise of surrender of a right in exchange for a valuable privilege which the State threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the State, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the State in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the State may compel the surrender of one constitutional right as a condition of its favour, it may in like manner, compel a surrender of all. It is inconceivable that guarantees embedded in the Constitution of the United State of America may thus be manipulated out of existence ... The executory of the State is qualified by the superior right of all citizens of enjoy the protection of the Federal Constitution. The State is without power impose an unconstitutional retirement, as a condition for granting a privilege is broader than the obligation this made by it."

81. In American Communication Association v. Douds (1950) 339 U.A. 382 at 417, Frankfurter, J. while concurring with the majority and upholding the power of the Congress to legislate a statute imposing certain conditions for being members of a Labour Union, has held that :

> "Congress may withhold all sorts of facilities to a better life bit if it affords them it cannot make them available in an obviously arbitrary way or exact surrender of freedoms unrelated to the purpose of facilities. Congress surely can provide for certain clearly relevant qualification of responsibility on the part of leaders of trade unions invoking the machinery of the Labour Management Relations Act."

82. In *Speiser v. Randall*[11] when an exemption from payment of property tax was denied to the persons who have refused to subscribe to an oath that they are not believers of overthrowing the established Government by use of forceful means, it was contended the denial was violative of 14th amendment. The Supreme Court of United States of America has upheld the plea and held that :

> "To deny and exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech. The appellants are plainly mistaken in their argument that, because a tax exemption is a 'privilege' or 'bounty', its denial may not infringe speech. This condition did not prevail before the California Courts which recognised that conditions imposed upon the granting of privileges or gratuities must be 'reasonable'. So, here, the

> denial of tax exemption for engaging in certain speech necessarily will have the effect of coercing the claimants to refrain from the prescribed speech."

83. In Sherbert v. Verner (1963) 374 U.S. 388, the question that arise was whether a Seventh Day Adventist who refused to work on Saturday, the Sabbath Day of her faith could be refused unemployment compensation on that ground and whether it was free exercise of her right and denial of compensation was violative of the constitutional right of freedom of speech and belief. While considering that question, it was held by Brennan, J. at page 404-405 that :

> "It is too late in the day to doubt that the liberties to religion and expression may be infringed by the denial for placing of conditions upon a benefit or privilege."

It was further held that :

> "In a sense the consequence of such a disqualification to religious liberties and practice may be only an indirect result of welfare legislation within the State's general competency to indicate."

In Carrington v. Rash (1955) 380 U.S. 29 at 92, Steward J. held that :

> "The privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper provided, of course, no discrimination is made between individuals in violation of the Federal Constitution ... "Fencing out" from the franchise a section of the population because of the way they may vote is constitutionally impermissible. The exercise or right so vital to he maintenance of democratic institutions cannot constitutionally be obliterated because of a fear of the political views of a particular group of bona fide residents. Military officers are entitled to an opportunity to show the election that they are bona fide residents. We deal here with matters close to the core of our constitutional system. The right to choose, that this Court has been so zealous to protect, means, at the least, that States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State."

In that case the facts were that military officers, bona fide residents were sought to be denied of the privilege to exercise franchisee on the ground that if they are conferred with such privilege, they would capture the administration and may act detriment to the interests of the local citizens. When challenged, the right to franchise was upheld.
In *Calvin Turner v. W. W. Fouche etc*[12]. Stewart, J. has stated thus :

"The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinction that violate federal constitutional guarantees."

84. There are host of other decisions of the Supreme Court of United States trenching upon diverse field available to recount. I deem it unnecessary to further burden the judgment but suffice to state that 'unconstitutional constraints' cannot be placed for exercise or enjoyment of a privilege or benefit or bounty which tend to abrogate the rights guaranteed under the Federal Constitution.

85. While this judgment is under type when further investigation was pursued, I placed may hands on a scholarly treatment meted out to the topic by Mathew, J. considering some of the American Judgments referred by me, apart from the statements of scholarship by other reputed writers on constitutional law, in St. Xavier's College v. State of Gujarat . Therein, the myth of privilege theory, sufficiently and succinctly, was exploded on the Indian soil too and the "principle of unconstitutional constraints" received hospitable transplantation in our judicial dicta replenishing the constitutional contours to enliven the goals set out by the founding fathers of the Constitution. Therein, the question that arose was whether conditions for affiliation of a minority educational institution to a university could be imposed by the statute in derogation of Art. 30 of the Constitution. It was contended that affiliation is a privilege and the conditions could be imposed. A larger Bench consisting of nine Judges, per majority, negatived the claim. Mathew, J. speaking for himself and on behalf of Chandrachud, J. (as he then was) in a concurrent judgment held in paras 152 and 172 thus :

> "We think that dangerous consequence will follow if the logic of the argument is accepted in all cases. The rapid rise in the number of government regulatory and welfare programmes, coupled with the multiplication of government contracts resulting from expended budgets, has greatly increased the total number of benefits, or privileges which can be conferred by government, thus affording the government countless new opportunities to bargain for the surrender of constitutional rights. With the growth of spending power of the State - a necessary accompaniment of the modern welfare state potentiality of control trough the control of purse has grown apace."

"…. (condition) cannot be made in instrument of suppression of the right guaranteed. Infringement of a fundamental right is nonetheless infringemental because accomplished through the conditioning of a privilege an addendum, which in no rational way advance the purpose of the scheme of benefits but does restrain the exercise of a fundamental right, the restrain can draw no constitutional strength whatsoever from its being attached to benefit or privilege but must be measured as though it were a wholly separate enactment."

86 charles A. Reich in his "New Property" at page 741 states that :

> "The distinction between the "right" and "Privilege" is getting blurred in this area. What were considered as privileges are coming to be recognised as interest in the nature of rights to be protected against arbitrary action. The Government largesse is gaining recognition as new property requiring legal protection."

87. Kenneth Culp Davis in his "Trial type hearing" reported in 70 Harward Law Review, page 193 at 225, emphasises that with a view to preserve the efficiency of privilege or benefits pleaded procedure thus"

> "The plain fact is that the Courts often give legal protection to what they persist in calling "Privileges". In doing so they commonly rely upon or more of the three ideas or on a fourth method which involves the lack of an idea. The three ideas are : (1) that constitutional principles of substantive and procedural fairness supply even when the privilege itself is not directly entitled to legal protection; (2) the privilege as well as rights

> are entitled to legal protection; and (3) that when a privilege is combined with another interest, the combination may be right and accordingly entitled to legal protection. The remaining method is (4) to cast logic to winds in discussing rights and privilege or to provide legal protection to a privilege without mentioning the problem of privilege. (1) The essence of the first idea is that the Government is still the Government even when it is dispensing bounties, gratuities or privileges, that we want the Government to be fair no matter what its activities may be, and that often that the best way to assure Governmental fairness is by the usual concepts of fairness. Therefore the basic constitutional limitation having to do with fairness often apply even though the privileges as such are not entitled to legal protection. But if a right is an interest which is legally protected and of a Court gives legal protection to privilege, does not the Court turn the privilege into a right ? Even if the answer to the question is yes, the proposition is still perfectly sound when one lacks a right to a Government gratuity may, nevertheless, have a right to a fair treatment in the distribution of the gratuity."

88. The privilege 'to be right' received approval from Bhagwathi, J. in Ramannas' case (supra) and in Kasturilal's case (supra) while dealing with contractual relationship with the Government vis-a-vis reasonableness of State action under Art. 14 of the Constitution. Thereby it entrenched deeply on this soil thus :

"Some of the forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largesse formerly regarded as privileges, have been recognised as rights while other have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largesse."

In I. J. Divakar v. Government of Andhra Pradesh , Desai J. speaking on behalf of the Court while reiterating that inviting applications for the posts does not by itself create any rights to the post in the candidate, held in paragraph 6 that :

> "A hope was generated in their minds that if they can successfully compete and come within the zone of selection they would be able to secure Government service."

Though the contention in the present form was not raised nor answered, it can reasonably be concluded that their Lordships intended to lay down that it creates an interest of legitimate expectation of interest in the candidate.

89. If the contention that it is only a mere privilege and that it does not create any interest or legitimate expectation of an interest is allowed to be prevailed, it may sweep away the hopes generated in the citizen to secure an office or a post under the State when it is in the zone of consideration : imperceptably erode the fabulous treasure in the concept of equality clause may impede the Court to afford any protection to the citizen at the exigencies of administrative efficacy belie the expectation animated in the citizen and thereby tend to place impediment to realise the aim of establishing an egalitarian society.

90. It may be made clear that mere making an application does not create a right in the citizen to the post. But a citizen has a right to expect that the authority concerned should consider then claims and qualifications uninfluenced by extraneous considerations. But if the authority swerves aside and takes extraneous factors into account while considering the claims and qualifications, then steps in, reminds the authority of the interest or legitimate expectation of the citizen putting it on forefront and insist of the authority to adopt fair procedure as per law in consideration thereof. No doubt in Breen v. Amalgamated Engineering Union, Lord Denning, M.R. had held that right to an appointment is neither a right nor an interest nor a legitimate expectation of an interest. But the ration has to be viewed in the light of the circumstances prevailing in the United Kingdom. In my view the above ration has no application to the Indian conditions when we deal with specific constitutional goals and protection afforded under Arts. 14 and 16(1) to a citizen as a step to establish an egalitarian society.

91. Thus, I am inclined to take the view that the right to an appointment to an officer or post under the State though is a privilege, in view of the constitutional goal of establishing socialist society assuring citizen of his dignity of persons, it is a new form of wealth. The State having vast power to distribute its largesse in imperical scale, it creates an interest or at least legitimate expectation of an interest or a modicum of right in a citizen in the matters relating to an appointment or employment to an officer or post under the State. The selection of the petitioner though provisional creates an interest or legitimate expectation of an interest inculcating hope to get an order of appointment as timescale clerk.Whether Principles of Natural Justice is part of Equality clause :

92. The next question for consideration is whether a citizen can be denied of the privilege or interest without affording an opportunity of hearing on the basis of an adverse report gathered behind his back. This question depends upon further question whether the principles of natural justice are part of the Equality clause enshrined in Art. 14 read with Art. 16(1) of the Constitution ? If the answer is positive, further probe is necessary; otherwise, not.

93. Article 10 of the Universal Declaration of Human Rights assures that every one is entitled to full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him. Under the European Convention of Human Rights and Fundamental Freedoms of 1950, Clause 6(1) provides that in the determination of all his civil rights and obligations or of any criminal charge against him, everyone is entitled to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The Constitution makers are fully aware of these fundamental humanising principles while assuring to the people under the Indian Constitution and couched, as against the State under Art. 14 in negative terms and under Art. 16(1) in positive form, assuring equality of opportunity to all its citizens relating to employment or appointment to any office or post under the State and to persons in other areas.

94. It may be mentioned that it is not explicit that the principle of Audi alteram partem is part of equality of opportunity while considering the claims for appointment to an office under the State. As held by Gwyer. J. in Re Central Provinces and Berar States of Motor spirits and Lubricants Taxation Act, 1938, AIR 1939 Fed. Court, 1, the broad and liberal spirit should inspire those whose duty it is to interpret the Constitution.

95. Bhagwathi, J. In Maneka Gandhi v. Union of India (supra) laid down that :

> "The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attentuate their meaning and content by a process of judicial construction. The wavelengths of comprehending the scope and ambit of the fundamental rights has been said in Cooper's case and our approach in the interpretation of the fundamental rights must be in tune with the wavelength."

Dominant Purpose Theory :

96. In Madhav Rao Scindia v. Union of India, AIR 1971 SC 536 at 576, Shah, J. speaking for the Court propounded "the dominant purpose theory" in construing the constitutional provisions, and laid down thus :

> "A provision in a statute will not be construed of defeat its manifest purpose and general values which animate its structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human right to property will, unless the contrary mandate be precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of constitution and statutory provisions alike."

97. In Hamdard Dawakhana v. Union of India, , Kapur, J. speaking on behalf of the Constitution Bench held that the provisions of the Constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred. The interpretation should be such as to subserve the protection of the fundamental rights of the citizen but that is subject to limitations set out in Art. 19 itself which are for general welfare of all the citizens taken as a whole and therefore for the interest of the general public.

98. Keeping the above principles in view, we have to consider the scope of Art. 14 read with Art. 16(1) to find out whether the principles of natural justice embrace within the compass of equality clause.Principles of substance and effect.

99. Chief Justice Weintraub of New Jercy Supreme Court held that a Constitution does not offer a literal definitive answer to the awesome problems which confront the Court. One may read equal protection clause a thousands times and still not detect the slightest clue to the proper decision. The answer must be found elsewhere. The constitutional framework, as we all know, is a more skeleton expression of governmental power and individual rights. The actual contours of those powers and rights must be determined in the context of changing conditions by a process which is more than a mere mechanical application of a constitutional phase to a set of facts. This statement was quoted by W. Friedman in his "Law in Changing Society" 1970 (abridged reprint edition) in the context of social change and interpretation of the Constitution, at page 51.

100. The Supreme Court of United States in *Oyama v. California*[13] at 637, laid down the approach for construing the constitutional provisions vis-a-vis the liberty of the citizen thus :

> "In approaching cases such as this one, in which federal constitutional rights are asserted, it is incumbent on us to inquire not merely whether those rights have been denied in express terms but also whether they have been denied in substance and effects."

101. Frankfurter, J. in his dissenting judgment in National Mutual Insurance Company v. Tide Water Transfer Company 337 U.S. 582 at 646 held that :

> "Great concepts like 'due process of law' ... were purposely left to gather meaning from experience, for they relate to the whole domain of social and economic fact and the statesmen who founded this nation knew too well that only that a stagnant society remain unchanged."

This view was approved by a later decision in *Roe v. Wade*[14] by Stewart, J.

102. It is already noticed that the Constitution seeks to establish an egalitarian socialist State and that majority population in the country are poor, lower middle class and middle class and that their children who acquire minimum educational qualifications at a great sacrifice of their parents, aspire to get into a post or office under the State to ameliorate their economic viability to assist their family or to foster the dignity of their person. The State is the mass employer. For a small number of posts numerical persons put in their claims for consideration. It is also equally relevant to note that in the village side, after Panchayat Raj institutions like Gram Panchayats, Panchayat Samithis and Zilla Parishads, Co-operative bodies and Banks, etc. were heralded the petty politicians at the grass root level having taken hold of the administration, animate to maintain control thereof; foment factionalism and keep the officials under their thumb or distribute the largesse at their disposal to their party supporters or commit acts of misfeasance. Intelligent and energetic youth quick with perception of such evils prevalent around them contaminating the democratic fabric and enthusiastic to eradicate them espouse the public cause against such actions or corrupt practices and thereby they not merely become thorn in the bed of those politicians and officials but also incur their wrath. To wreak vengeance and to wit at them to mar the career of such young blood, it is not uncommon to send anonymous and pseudonymous petitioners with false allegations against such youth. Police reports normally emanate from the level of Head Constable or Sub-Inspector of the Police Station having jurisdiction. It is not unlikely to fabricate a false report at the instance of the enemies of the candidates. In such circumstances, it is conceivable that the appointing authority, on going through them, would normally form prejudicial view against the applicants concerned.

103. Bhagwathi, J. in Maneka Gandhi case (supra) has held that Fundamental Rights create conditions in which every human being can level up his personality to the fullest extent. Take the case of a person who has no property but with Governmental benefaction acquired qualifications for instance, Ph. D. in Electronics or Physics or Geology, etc., he is eligible for appointment to a post in the respective branch under the State. He can develop his personality both intellectually and economically and of immense support to his family provided he is given job. When he has applied for and was found eligible but his rival (a hypothetical case of co-competitor or one animated with jealousy or enimity just referred to) manoeuvred with the police and procured an adverse report with all false allegations, if the theory of privilege is given credence to an if the authority relying on the report denies appointment to the candidate, does it not a denial of an opportunity to get an appointment to a post under the State ? Does it not in effect and in substance violate the equality clause ? Does it not imperil the career of the candidate to develop his personality and thereby defeat the constitutional rights guaranteed to him ? In the light of this background the immediate question that would emerge is whether the Executive Government

would be given blanket power to deny appointment to the successful candidate or an aspirant, on taking note of such adverse material without affording an opportunity of representation and hearing. As stated earlier, there is no express guarantee under Art. 14 and 16(1) of the Constitution for such an opportunity. Therefore the question is whether the construction sought to be put up by the respondents is feasible to be given countenance to ?

104. In Kesavananda Bharathi v. State of Kerala , Mathew, J. held that "Fundamental rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience."

105. In *Griswald v. Connecticut*[15] Dauglas, J. was to hold that :

> "Freedom of speech includes not only right to print or utter, but also to receive, read ... Without those peripheral rights the specific rights would be less secure. They have penumbras formed by emanation from those guarantees that help, give them life and substance. The enquiry is whether a right involved is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of our civil and political institutions."

Similarly in Jane Roe v. Wade (supra) it was held :

> "The right of personal privacy of guarantee of certain areas or zones of privacy does exist under the Constitution and the roots of that right may be found in the first Amendment, in the 4th and 5th Amendments in the penumbras of the Bill of Rights in the 9th Amendment and in the concept of liberty guaranteed by the first section of the 14th Amendment."

Thus, the Supreme Court of United States in the above two cases were to consider the question whether a right penumbras from a named fundamental right and form part of the Federal Constitutional protection so as to subserve the personal freedoms of the person.

106. The right to earn a living according to one's capabilities and training, may be regarded either as an aspect of liberty (to develop one's personality) or as an aspect of property, if property, as it must, is no longer defined as a compound of tangible, real and personal assets, but the totality of all rights and interests capable of legal protection which have an economic value. Whatever its characterization the right to earn a living has barely been articulated as an essential value to be protected in the administrative process although its protection is for the ordinary citizen, the 'common man' perhaps a matter of greater practical importance than any of the traditionally articulated values. If this is a value worthy of protection in contemporary democracy the unchecked power of the ... Government department ... to deprive persons of their livelihood and employability in the field of their training and skill is truly arbitrary power. (Friedmann, in his "Law in a Changing Society", at page 281).

107. In Maneka Gandhi Case, (supra) Chief Justice Beg, in paragraph 26 has held :
"Both substantive and procedural laws and actions taken under them will have to pass the tests imposed by Art. 14 and 19 whenever facts justifying the invocation of either of those Articles may be disclosed. The test of reason and justice must be pragmatic. Otherwise ceases to the

reasonable.In paragraph 27, it was held :

> "Though wide discretionary power may be given to the executive we must look for and find procedural safeguards to ensure that the power will not be used for purposes extraneous to the grant of the power before we uphold the validity of the power conferred. We have to insist on procedural proprieties, the observance of which could show that such a power is being used only to serve what can reasonably and justly regarded as public and national interest capable of overriding individual's interest."

108. In *Poe v. Ullman*[16]) Harlan, J. in his dissenting judgment stated that :

"The full scope of the liberty guaranteed by the due process clause cannot be found in or limited by precise terms of the specific guarantee elsewhere provided in the Constitution. Liberty is not a series of isolated points picked out in terms of taking property, etc ... It is a rational continuum which broadly speaking includes a freedom from all substantial, arbitrary imposition and purposeless restraints."

109. In Jane Roe v. Wade (supra) Douglas, J. at page 210-211 in his concurring judgment held that :

"A catalogue of these rights includes customary, traditional and time honoured rights, amenities, privileges and immunities that come within the sweep of 'the Blessings of Liberty" mentioned in the preamble to the Constitution. Many of them, in my view, come within the meaning of the term 'Liberty' as used in the 14th Amendment."

W. Friedmann in his "Law in a Changing Society", 1970 Abridged Edition, at page 289 states that :

"The principle of equality which as we have seen is a corner stone of administrative justice, demands that public authorities be held not liable for interference with legitimate interests of citizens unless such liability would impede the overriding needs of public service."

Article 14 strikes it arbitrary action of the executive and the legislature. The principle of reasonableness and rationality is an essential element of equality projected by Art. 14 so as to be bastion against arbitrariness. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights (Kasturi Lal v. State of Jammu and Kashmir(supra). It must characterise every State action whether it be under authority of law or in the exercise of executive power without making law.

110. In Maneka Gandhi's case (supra) Bhagwathi, J. held that :

"Article 14 is a pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subject to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embarking scope and meaning, for to do so would be to violate its activist magnitude, Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. It 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 Art. 14 like a brooding omnipresence and procedure contemplated by Art. 21 must answer the test or reasonableness in order to be in conformity with Art.

14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive. Otherwise, it would be no procedure at all and the requirement of Art. 21 would not be satisfied."

This view was reiterated in Kasturi Lal's case (supra).

111. Therefore, right to equal treatment is calculated to promote profound social interest. Right like equality is indispensable for a citizen to lead good life than property rights. In the words of Alexis De Tocquelle that man's passion for equality is greater than his desire for liberty. The principle of "interest" to be reality, is to be articulated in full vigour so that the concept of "privilege" becomes meaningful. Justness and fairness should pervade spectrum of considering the claims by the authority concerned for an appointment to a post or office under the State. If the right to hearing in that process is penumbra of equality clause it would subserve the privilege, interest or legitimate expectation of interest of an applicant for an equal opportunity while considering his claims for an appointment to a post or an office under the State. It would, thereby, bear material, practical and fruitful result yielding utility to equality clause or else tend to be sterile. Viewed form this perspective it is legitimate on the part of the citizen to expect fair consideration of his claims. The non-consideration thereof is itself violative of the basic values enshrined and implicit in the fundamental doctrine of equality. This process may help as aid like mortar, if not brick in building an egalitarian society. It is apposite to quote here Professor H. R. Towney in his "Equality" 1931 Edition, that it (concept of legal equality) was the levelling of legal privilege which provides the stimulus for the mobilisation of economic power and social emancipation upon which the modern society is based. Bernard Schewartz says in "A Commentary on the Constitution of the United States of America", Volume II, Page 488 that "it would be impossible to overestimate the importance both in theory and practice of the concept of legal equality embodied in the equal protection clause." Therefore judicial solicitude is necessary to preserve the said right to the citizen so as to ensure conditions to the citizen to the pursuit of happiness and to develop the personality to the full extent.

112. In Maneka Gandhi's case (supra) the ratio of their Lordships would disclose that the right to hearing, though was not specifically an adumbrated one under the Passport Act, to comply with the constitutional requirement of fair procedure under Art. 21 and to avoid unreasonableness and arbitrariness of the action of the executive conformable to Art. 14 so as to subserve the right guaranteed under Art. 19 the audi alteram partem principle was held part of the provisions of the Passport Act.

113. In view of the above law laid by the highest Courts of India and America and of the consideration of the subject; of the facts and circumstances referred to above; setting of the right enshrined in Arts. 14 and 16(1) of the Constitution and the ultimate Constitutional goals seeking to achieve an egalitarian socialist state, I am inclined to hold that the reach of the equality clause under Art. 14 read with Art. 16(1) is broad enough to encompass with its ambit the audi alteram partem principle as its penumbra.Whether Office Memorandum is Law and if so whether it is valid ?

114. The next question for consideration is whether the petitioner can be denied of an opportunity of hearing with respect to the contents of adverse report dated 18th September, 1978, sent by the District Collector, Khammam. Sri Subrahmanya Reddy, learned senior Standing Counsel contends that the Office Memorandum dated 1st August, 1975 expressly excludes disclosure of the adverse reports. During the course of discussion when I pointed out as to how he proposes to cut down the wavelength expanded in Maneka Gandhi's case (supra) and stimulated further inSwadeshi Cotton Mills v. Union of India, (supra) he pressed forth administrative expediency and contended that in the absence of statutory rules made by the Government, the Office Memorandums dated 27th September, 1967 and 1st August, 1975, shall be the law occupying the field of action. In view of the specific exclusion of divulging the adverse reports under the latter office memorandum, the principles of natural justice are expressly excluded. The principles of natural justice shall only supplement where it is not expressly excluded and it cannot supplant the law. Therefore, the petitioner is not entitled to an opportunity of hearing in respect of the adverse report referred to above. In support of his contention that office memorandum is law, he relied on Santh Ram Sharma v. State of Rajasthan (supra), Union of India v. K. P. Joseph (supra) and State of U.P. v. Chandra Mohan (supra). For the proposition that the principles of natural justice will supplant the law but cannot supplement the law, he relies upon Union of India v. J. N. Sinha (supra). For exclusion of the application of the principles of natural justice, he relies on Malak Singh v. State of Punjab (supra), Schmidt v. Secretary of State For Home Affairs; Breen v. Amalgamated Engineering Union (supra); "Natural Justice" by Paul Jackson at page 118; De Smith's "Administrative Law" 4th Edition, at page 189; Cases and material on administration of Law by Bailee at page 392 : and the Principles of Natural Justice Substance and Shape by Clerk. In support of his contention that administrative exigencies excludes the application of principles of natural justice, he relies upon Maneka Gandhi's case (supra).

115. Sri Jagannadha Rao, learned counsel for the petitioner, on the other hand, contends that the adverse report sent contains several incorrect statements and the petitioner, before being denied of an opportunity of appointment, is entitled to an opportunity of hearing in respect of those adverse reports. The Office Memorandums relied on by the respondents are violative of Art. 16 of the Constitution. They cannot over-ride the constitutional provisions. In support of his contentions, he relies on the "Administrative Law by Wade. 4th Edition at page 459 and 460; "Administrative Law" by Kenneth Culp Davis at Page 181 and Cases and Comments on Administrative Law by Gilhorn, 7th Edition, page 29, 434 and 437; Son Pal v. General Manager, Northern Railway (supra), *Board of H.S. & I.E.U.P. v. Chittra*[17]*State of Punjab v. K. R. Erry*[18]*.R.).* For violation of the principles of natural justice, he relied on Swadeshi Cotton Mills case and Maneka Gandhi's case (supra).

116. In view of these respective contentions, the first question that arises for consideration is whether the Office Memorandum can exclude the application of the principles of natural justice and if so, whether they are valid ? It is undoubted that these two Office Memorandums referred to above are administrative instructions. Under Art. 73 of the Constitution the executive power of the Union shall extend "subject to the provisions of the Constitution", to all matters with respect to which Parliament has power to make laws. Proviso to Art. 309 of the Constitution empowers the President or such person as he may direct in the cases of services and post in connection with the affairs of the Union to make rule regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in this behalf is made by Parliament as stated under the main part of Art. 309. Obviously, in exercise of this power, the Office

Memorandums referred to above have been issued by the Central Government. It is also to note that admittedly no statutory rules have been framed regulating the recruitment and the conditions of service of the time-scale clerks. All these actions are being regulated through the executive instructions issued from time to time by the Central Government. I have already held that the principles of natural justice are part of Art. 14 read with Art. 16(1) of the Constitution and that whenever a person eligible for appointment submitted an application for recruiting him for the post advertised for, his claims are to be considered objectively on merits and when provisionally selected and a report is sought for regarding the character and antecedents of the candidate and further sought to be made use of before denying such an appointment, compliance with the principles of natural justice is mandatory. The question then arises is whether the Office Memorandums are valid in law. It is not necessary that there should be statutory rules in the first instance to operate the field. Undoubtedly the Executive Government can issue administrative instructions so long as no statutory rules under proviso to Art. 309 or appropriate legislation is made regulating the conditions of service and those instructions would validly operate the field. One of the aspects of the rule of law in a Democracy is that every executive action if it is to operate to the prejudice of any person, must be supported by some legislative authority as held by the Supreme Court in *State of Madhya Pradesh v. Thakur Bharat Singh*[19]*R.* and followed in Satwant Singh v. A.P.O., New Delhi and must be kept within the limits of the law. (M/s. Kasturilal v. State of Jammu & Kashmir (supra). I may make it clear at this juncture than in order to enable the executive to function it is not necessary that there must be a law already in existence and that the powers of the executive are limited merely to carry out those laws. But however, the Executive Government can never go against the provision of the Constitution or any law validly made. It is also well settled law that the Legislature can validly make a law only consistent with limits prescribed under the Constitution. Art. 73 itself makes it manifest. The executive shall have no power to impose restrictions under an executive action to the exercise of the rights guaranteed under the Constitution. The exercise of such power and function is subject to *Part III of the Constitution. In Narendra Kumar v. Union of India*[20] it was held that :

"The fact that the words 'in accordance with the provisions of the Articles of the Constitution' are not used in the section, is of no consequence. Such words have to be read by necessary implication in every provision and very law made by Parliament on any day after the Constitution came into force. It is clear therefore that when S. 3 confers power ... do not violate any fundamental rights guaranteed by the Constitution of India."

117. Article 13(2) of the Constitution provides that the State shall not make any law which takes away or abridges the rights conferred by this part (Part III) and any law made in contravention of this Clause shall, to the extent of the contravention, be void. Clause (3) thereof defines that law include. Notifications having force of law. In view of the above consideration, the Office Memorandums are law laying down the criteria regulating the manner in which the antecedents, character and conduct of the provisionally selected candidates could be got verified and report sought for. But to the extent of the exclusion of disclosure of the nature of adverse report in Para (2) of the Official Memorandum No. 18011/1(A) /75-Est. 'B' dated 1st August, 1975 of Department of Personnel and Administrative Reforms, namely, "the fact that action is being taken on the result of the police report should not be divulged to the employees, nor should the nature of substance of the reports received from the police be communicated under any circumstances to the employee" and similar language in the other Office Memorandum dated 12th February, 1955 or 13th August, 1955 or Office Memorandum No. F. 56/50/54-Estt. 'B' dated 25th September, 1954 or any other Office Memorandum, abridge or take away the

fundamental rights of a provisionally selected candidate or employee and to that extent it contravenes Art. 14 read with Art. 16(1) of the Constitution. Therefore, they are hereby declared void and inoperative. In view of this conclusion, the contention of the learned Senior Standing Counsel Sri Subrahmanya Reddy, referred to earlier, cannot be accepted and the decisions relied on by the Counsel on either side are not directly on the point. Therefore they need not be considered in extenso.

118. In Maneka Gandhi's case (supra) the Supreme Court has held that the principles of natural justice shall be read as part of the provisions of the Passport Act and that its validity was upheld on that premise. A Division Bench of this Court to which we are parties (Chennakesav Reddi, J. and Ramaswamy, J.) in D. K. V. Prasadarao and others v. Government of Andhra Pradesh (W.P. No. 489/80 and batch, dated 8th April, 1983) has upheld Rule 12 of the Andhra Pradesh Cinemas (Regulation) Rules on the same reasoning reading the principles of natural justice as part of the Rule. Therefore, following the ratio laid down therein, I have no hesitation to hold that the principles of natural justice shall be read as part of the Office Memorandum and accordingly, the Office Memorandums are valid.Fair Procedure : The next question for consideration is what is the procedure to be followed by the Officer in charge of the recruitment and the appointing authority, where recruitment agency is different or by both ? 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 Frankfurter, J. in Joint Anti Facist Refugee Commission v. Mc. Gruth 341 U.S. 1223, 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 give too slender an assurance of rightness. 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. As stated by Kenneth Culp Davis in his "Trial Type Theory" referred to above, that even though one may have no right to a Government gratuity, one may have a right to be free from damage to reputation or position that may result from withholding of a Government gratuity in some circumstances.

119. Bradley, J. in *United States v. Samuel D. Singleton*[21], has held that :

"No State shall make or enforce any law which abrogate the privileges or immunities of citizens of the United States."

Bhagwathi, J. in Ramanna's case (supra) has held that :

"It is indeed unthinkable that in a democracy governed by the rule of law, the executive Government or any of its officers should possess arbitrary power over the interests of the individual ... The procedure adopted should match with what justice demands. History shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imperceptibly but surely erode the foundations of liberty."

120. Doughlas, J. in Joint Anti Facist Refugee Commission v. Mc. Grath (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 states that :

"What is needed then is to make the welfare state itself a source of new "right" and to surround the "rights" in public benefactions with legal safeguards - both procedural and substantive comparable to those enjoyed by the traditional right of property in our law."

121. I respectfully adopt the above law and apply to the facts of this case. In view of this position, do the respondents entitle to rely upon the ex parte adverse report submitted by the District Collector, Khammam, to deny the petitioner of its contents and a right to hearing and if so, to what extent ? It is undisputed that the report consists of not only the admission made by the petitioners of his previous conviction but also stated that after termination of criminal proceedings he was alleged to have participated in organising Dalams in the plain areas, and continued his association with P.D.S.U., etc. The question is, whether the letter allegations are true, real and in fact the petitioner participated, as reported to be. Then what is the machinery to find out the credibility of the information and whether the petitioner can be deprived of his right to an appointment on that basis since he has already been provisionally selected and put on the selection list. I have already held that the provisional selection created an interest inculcating a legitimate expectation in the petitioner to get the time-scale clerk in course of time. In such circumstances, whether respondent No. 1 is justified in denying the said appointment on the basis of the adverse report submitted by the District Collector, Khammam ? The Code of Criminal Procedure assured an opportunity to a person proved to have committed an offence of murder before infliction of the sentence - be it death or imprisonment for life or lesser offences under S. 235(2). Does a provisionally selected candidate on mere allegation stand on a worse position than a proved offender ? Does not the denial of a fair opportunity an abnegation of enlightened procedure of the Code ? Does not its denial due to adverse report in the field of selection a retrograde step from fair procedure animated from Art. 21 of the Constitution ? To this area, the principals of natural justice creep into play their salvaging role.Broding Omnicompetency and Omnibenevolence of Principles of Natural Justice :

122. The distinction between quasi-judicial and administrative power was declared thus in A. K. Kripak's case (supra and now obliterated by eliting elasticity in expanding the principles of natural justice of wide areas. Ramanna's case having entered into the contours of privileges has kept thereby a canopy from its reappearance. The principles of natural justice demand that no person shall be denied without hearing of his rights or interests or privileges that beset with adverse consequences to carry on his business or enter into any advantageous relationship with the Government. The Court's have evolved these principle to protect the interest of the citizen and improve the quality of administration. Natural justice is the name given to certain fundamental rules that are necessary to the exercise of power terrained from judicial field to administrative sphere as a great safeguard against abuse of discretionary power.

123. Beadroll of decisions of highest Courts have settled the applicability of principals of natural justice to varied facts. It is tretite to repeat all the decisions but suffice to state that the rules of natural justice advanced their frontiers considerably. They made great strides in administrative law, and found fruitful field of application to diverse circumstances. They have come to become

means to an end but not an end in themselves. They have now deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. The purpose is to prevent miscarriage of justice. Government administration and an honest and bonafide decision require not only impartially or merely bringing one's mind to bear on the problems but to acting fairly. It is now a brooding omnipresence though varying in its play. Its essence is good conscience in a given case. They can supplement the law but cannot supplant it. Pedantic approach is discredited but fair play is fostered to salvage the cardinal rule to the extent permissible in a given case. Exception engrafted is compulsive administrative exigency but in such special cases too post decisional remedial opportunities are insisted upon.

124. Therefore administrative decision taken by an authority if result in adverse consequences to the legitimate interest of a person in jeopardy of serious loss, Courts would be "extremely" reluctant to exclude the duty of affording even minimal hearing shorn of all its trappings. Dilatory features which would impede the administrative expediency or frustrate the need for utmost promptitude require modulation suitable to situation. But all relevant factors have to be viewed pragmatically. In short, the rule of fair play or fundamental fair procedure must not be jettisoned save in extremely exceptional circumstances where compulsive necessity dire demands in sensitive zones unoccupied by legislative Acts, and the Court must make every effort even in those areas to the permissible extent to apply the principles of natural justice.

125. The audi alteram partem rule must be flexible, malleable and na 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 over 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 decision worthy of being called "ethos of adjudication". In the words of Harry W. Jones that : "meaningful statutory standards, realistic procedural requirements and discriminatory techniques of judicial review are among the tools to control the discretionary power. (Rule of Law and Welfare State - (1958) 51 Columbia Law Review, 143 at 152). 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.

126. Thus the insistence of the observance of fundamental fairness in the procedure becomes a balancing balm to allieviate apprehension of arbitrary decision by the executive Government while assuring opportunity to disabuse the prima facie impression formed against the person to usher in an era of largest number of people with proper checks and balances between needs of the State and the rights of the individual. Thus the brooding omnibenevolence and omnicompetency of the need for expediency and claim for justness interplaying ethos of fair adjudication in action.

127. No doubt, the petitioner has no pre-existing right, but when the adverse report sent against him is sought to be made use of, to deny him of the opportunity to get into Government job as Time-Scale clerk, it is incumbent upon the first respondent to give an opportunity of hearing in respect thereof. Sri Subrahmanya Reddy, contended that the respondent is entitled to collect relevant material regarding the character and antecedents from any available source and if the

petitioner is made aware of such an information, it would jeopardise the administration and it would cause impediment for the Government to collect correct and truthful data. In support of this contention, he relied strongly upon Maneka Gandhi's case (supra) and Malak Singh v. State of Punjab (supra). It may be made clear that it is always open to the executive Government to select candidates suitable to discharge the duties of the post or office diligently, faithfully implement its programs to the best advantage of the people. It has also power to collect all the necessary material and data regarding the character and antecedents of the persons proposed to be appointed. It is not necessary for the executive to disclose the source whence from they gathered such material. (S. 124 of the Evidence Act). The material collected (police report) is a permanent police record even for the subsequent occasions and if allowed to prevail, result in permanent deprivation of the chance to get a job or advantageous relations with the Government to a qualified person. In the present prevailing contaminated atmosphere, in the society, should the police report be given such a sancrosanct credibility to its truthfulness and does not the applicant know what are the reports, if possible its true extract or else a correct substance thereof so that he could be in a position to know the allegations and establish its incorrectness or otherwise ? If we exclude the audi alterm from application, the inevitable effect is permanent deprivation of an opportunity to a citizen to develop his personality to the fullest extent.

128. Undoubtedly the power of this Court under Art. 226 of the Constitution is trancendental and the arms of this Court are long enough to reach and undo injustice wherever it is found, But the crucial question is as to how this Court could know of it. An aggrieved person must be in a position to know the factors weighed with the authority concerned to deny him an appointment. It is fundamental that before approaching the Court for redressal he must be definite and specific of the grounds on which he is denied of the right to appointment to make up his mind to take action and the ground of attack. He cannot venture to make unfounded allegations lest he will be subjected to perjury or disentitled to relief being discretionary nor be in a position to effectively encounter the result reached by the authority to persuade the Court to accept his connection. Judicial adjudication is not a futile exercise. Even otherwise many people due to impecunious conditions are unable to reach the portals of the Court for redressal. Art. 39A provides proof of this fact. To such people why should be they denied of the right to be heard when it could be extended at the threshold instead of driving him/them to a Court to make an unequal battle and take a chance ? Why should such citizen be made to suffer injustice due to arbitrary action of the executive ?

129. In Radhakrishnan Chettiar v. State of Tamil Nadu , Chief Justice Ray, held that furnishing substance of the reports and calling upon to show cause of the same is sufficient compliance with the principles of natural justice.In C.A.T. A Co-operative Society v. Andhra Pradesh Government AIR 1977 SC 231, Goswami, J. held that even the knowledge of the contents or the absence of prejudice is not a ground to deny opportunity of hearing when an adverse material is sought to be made use of.

130. In Rigina v. Gaming Board for Great Britain (1970 (2) Q.B. 417) the Court of Appeal had to consider a case where applicants have submitted to the Board for a certificate to enable them to obtain gaming licence, Reports have been sought for regarding the character and antecedent and credibility of the persons to carry on gaming business. Adverse reports were sent. There is no pre-existing right to the applicants. The substance was made known upon which the Board sought to rely. It was contended by the applicants that the reports were not supplied and that

therefore the action of the Board is violative of the principles of natural justice. Lord Denning M.R. speaking on behalf of the Court of appeal at page 431 held that :

> "Seeing the evils that have led to this legislation. The board can and should investigate the credentials of those who make application to them. They can and should receive information from the police in this country or abroad who know something of them. They can and should receive information from any other reliable source. Much of it will be confidential. But that does not mean that the applicants are not to be given a chance of answering it. They must be given a chance, subsequent to this qualification; I do not think they need tell the applicant the source of their information, if that would put the information in peril or otherwise be contrary to the public interest. Even in a criminal trial, a witness cannot be asked who is his informer."

Thus, even Lord Denning had conceded a right to be made known of the adverse report though the source need not be disclosed.

131. In RE H.K. (An Infant) (1967 (2) Q.B. 167) was also a case where an immigrant has no pre-existing right and Lord Parker, C.J. insisting upon that an opportunity of representation should be given to disabuse the prime facie impressions formed against the immigrant. At page 630, it was hold :

> "This is not, as I see It, a question of acting or being required to act judicially, but to being required to act fairly. Good administration and an honest or bonafide decision must, as it seems to me, require not merely impartially, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administration-working only to that limited extent do the so called rules of natural justice apply, which in a case such as this is merely a duty to act fairly."

132. In Ramanna's case (supra) case even in the case of grant of privilege in matters of distribution of largesse, Bhagawati, J. held that failure to give an opportunity is violative of the principles of natural justice.

133. Therefore when the material adverse to the applicant is made of, then it is minimal that the true extract if possible or at least the correct and true substance of the allegations should be made known to the person whose interests or legitimate expectation of interest are in jeopardy so that he could know what are the factors that are sought to be made use of and whether there is any truth in it or not.

134. As stated earlier, Sri Subrahmanya Reddy, learned senior Standing Counsel placed strong reliance on the observations of Bhagawati, J. in Maneka Gandhi's case (supra) at para 63, wherein it was held that the principles of natural justice are excluded when it has the effect of paralysing the administrative process or the need for promptitude or urgency of the situation so demands but post decisional opportunity was insisted upon. But in this case, does such a situation arise ? If he is denied hearing it is an end in itself. Post decisional opportunity is a futile exercise. After all the respondents are making recruitment to the post of Time-Scale clerks. Recruitment is a tardy process. Even a formal communication indicating the correct version of the allegations sent against him and to give an opportunity of making representation and hearing on a day fixed

by the appointing authority and asking him to say as to what he wishes to say on those allegations, are minimal. It should also communicate the reasons for not appointing him. The reasons may be short or inelaborate but should not be devoid of substance or cryptic or vague so that when challenged, the Court would be in a position to find whether the authority concerned had applied its mind taking into account only relevant and material facts and reached the conclusion objectively and dispassionately. The above minimal requirement would not imperil the administrative expediency nor impede the need for promptitude. The answer has succinctly been given by Wade in his Administrative Law, 4th Edition at page 482, thus :

> "In truth, the lesson of the host of cases that have been brought before the Courts is that exceptions are conspicuous by their absence wherever genuine administrative power has been exercised under statute with any serious effect on a man's property, liberty or livelihood. Where a right to be fairly heard has been denied, it is more probably a case of had decision than of a true exception. The rule must come close to observing the judicial tribunals quoted earlier - a principle of universal application a duty lying upon everyone who decide anything."

135. Therefore the ratio of Bhagawati, J. has no application to the facts in this case. The respondents sought to take shelter from Malak Singh v. State of Punjab (supra). That was a case where the petitioner sought for supply of the surveillance report. In my view that decision has to be viewed in the light of the circumstances therein. With a view to maintaining law and order situation and to track the activities of the petitioner, the surveillance reports were secured to keep watch over him. If those reports are divulged it would jeopardise the law and order situation and frustrate the purpose. Under those circumstances, Chinnappa Reddy, J. speaking on behalf of the Court was to hold that the principals of natural justice were excluded. In my humble view, their Lordships never intended to lay down the applicability of the ratio therein to cases of the facts in the present type. Therefore the said decision is distinguishable.

136. To sum up, I cannot but better close this topic by extracting the emphatic language couched by Sarkaria, J. in Swadeshi Cotton Mills case (supra) that :

> "The observance of this fundamental principle is necessary, if the Courts, Tribunals and Administrative bodies are to command public confidence in the settlement of disputes or in taking quasi judicial or administrative decisions affecting civil right or legitimate interests of citizens."

137. The next question for consideration is whether the petitioner can be denied of the right to an appointment in view of his political views and the alleged participation in subversive activities. The learned Single Judge has considered the report in extenso and held that paragraph (2) alone is the relevant material upon which the respondents may rely on, but the petitioner was not afforded an opportunity. Apart from that, the report also consists of the admission made by the petitioner that he was convicted under S. 25A of the Indian Arms Act by the Criminal Court and that conviction has become final. My learned brother, Chennakesav Reddy, J. has said enough about political philosophy of the persons aspiring to get Governmental posts and the duties of a civil servant, etc., in this Judgment.

138. Sri Subrahmanya Reddy has placed reliance on a Supreme Court and Kerala High Court decisions and Sri Jagannadha Rao on a number or decisions of this Court which are distinguished

by Sri Subrahmanya Reddy. In the view I am taking, it is not necessary for me to express any opinion on the point regarding the political philosophy of the candidate and the commitment to the cause of the executive. No doubt there are no statutory rules or instructions prescribing previous convictions as a disqualification for an appointment, but the process of reasoning which my learned brother, Chennakesav Reddy. J. has given in his Judgment is enough and I need not add any further on this point. I respectfully agree with the same. Thus comes to the question as to what are the grounds on which the petitioners is denied of. It consists of two parts. One is the unequivocal admission made by the petitioner of previous conviction for subversive activities and the other is paragraph (2) of the report accepted by the learned Single Judge (Jeevan Reddy, J.) constituting relevant material. If one of the grounds is sufficient to disentitle the person, then the petitioner can validly be denied of an opportunity of appointment. Unequivocal admissions are best pieces of evidence in respect of which there is no further opportunity of hearing or representation need be given. In his statement in the proforma, the petitioner made an unequivocal admission of his previous conviction. He was convicted for his participation in subversive activities and it became final. It was a relevant ground as per the office memoranda to exclude a person for appointment. Under those circumstances, no further opportunity need be given to the petitioner. Thus, for and no further is the route through which I reached the result to allow the appeal.

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9(1897) 165 U.S. 578
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