Sanjeev Kumar and Others Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Jan-29-1999

Reported in : 1999(1)AWC853; (1999)1UPLBEC575

Judge : S.R. Singh, J.

Acts : Constitution of India - Articles 14, 21, 41 and 226; Uttar Pradesh Public Services Tribunal Act, 1976 - Sections 3 and 4; Bihar Universities Act, 1970 - Sections 35 (3)

Appeal No. : C.M.W.P. No. 13799 of 1998, with 5 other Writ Petition

Appellant : Sanjeev Kumar and Others

Respondent : State of U.P. and Another

Advocate for Def. : S.C. and ; A.P. Sahi, Adv.

Advocate for Pet/Ap. : Piyush Shukla, ;L.P. Naithani and ;V.C. Misra, Advs.

Judgement :

S.R. Singh, J.

1. Petitioners'grievances are focussed on orders by which their services came to be terminated as 'no longer required'. The petitioners seek the reliefs of a writ in the nature of certiorari quashing the orders by which their services were

terminated in purported exercise of powers under notification dated 29.4.1980 as 'no longer required' and for a direction in the nature of mandamus to pay them salary.

2. Petitioners in this fascicle of writ petitions were appointed junior clerks/Asstt. Cashiers Grade-2concerned Sub-Regional Transport Offices. The Civil Writ Petition No. 13799 of 1998 wearing the mantle of leading file, pertains to Sub-Regional Transport Offices in Meerut Region. The appointments were seemingly made in the purported compliance of the service Rules notified by Notification dated 29.4.80 and ostensibly against permanent vacancies after prior intimation of the vacancies to the Addl. Transport Commissioner (Head quarters) U. P. Lucknow vide D.O. letter dated 5.7.1997 annexed as Annexure-2 to the leading case. The Transport Commissioner, U. P. Lucknow, it would appear, gave his imprimatur vide letter dated 15-7.1997 for recruitment being made in accordance with rules in Meerut, Ghaziabad Moradabad regions and Saharanpur Sub-region. Similar procedure is said to have been employed in making appointments in other Regional/Sub Regional Transport Offices. It would be worthwhile to notice that although the procedure laid down for regular appointment is said to have been abided but the status of appointees was quoted in their appointment letter as temporary.

3. 1 have heard Sri L. P.Naithani and Sri V. C. Misra, Senior Advocates for the petitioners and Sri R. N. Singh, Senior Advocate assisted by Sri A.P Sahi and the standing counsel for the respondent. The learned counsel for the petitioners urged, inter alia, that the appointments had all the indicia of regular and permanent appointments and hence were not liable to be terminated in the manner prescribed for termination of temporary employment ; that the orders terminating the services of the petitioners were issued by the Appointing Authority at the behest of the Transport Commission and hence, the exercise of discretion by the Appointing Authority (Regional Transport Officer) terminating the services of the petitioner was tainted by error of law ; that the impugned orders were vitiated for reason that the principle of natural justice and fair-play in State action was not at allobserved by the respondents ; that the termination of services of the petitioner as 'no longer required' was a mere smokescreen for termination actuated by extraneous and

political considerations ; and that in the fact-'situation of the case, a reasonable and fair enquiry ought to have been held before terminating the services of the petitioners if at all, the services were liable to be terminated on ground that the appointments were made in flagrant derogation of rules and or against non-existent vacancies as alleged in the counter -affidavit. In opposition, Sri R. N. Singh, Senior Advocate appearing for the caveator in one of the writ petitions and the standing counsel, appearing for the State Authorities, submitted that the petitioners had alternative remedy under the provisions of the U. P. Public Services Tribunal Act, 1976 ; that appointments were made de hors the rules and in the fact-situation of the case, the Court should not step in to interfere with the impugned orders in its extraordinary jurisdiction under Article 226 of the Constitution ; that in the similar situation. Writ Petition No. 15783 of 1988 met the fate of dismissal at Lucknow Bench of this Court and two writ petitions--one by Shakil Ahmad and the other by Vikas Sachan were dismissed by a learned Judge of this Court ; and that the petitioners who had no right to the posts, were not entitled to any opportunity of hearing being given as a condition precedent to termination of their service nor were they entitled to invoke the doctrine of legitimate expectation in the matter.

4. I have given my anxious considerations to the submission made across the bar. The first question that emerges for consideration, has the complexion of a preliminary objection raised on behalf of the respondents about the maintainability of writ petition on the premise that the petitioners did have the alternative remedy to fall back upon under the provisions of the U. P. Public Services Tribunal Act, 1976. The principle well-settled is that the existence of an adequate alternative remedy is a matter to be taken into reckoning in entertaining a writpetition under Article 226 of the Constitution. But at the same time, it is equally well-settled that requiring the exhaustion of statutory remedy before a writ petition is entertained 'is a rule of policy, convenience and discretion rather than a rule of law' as observed by the Supreme Court in State of U. P. v. Mohd. Nooh, AIR 1958 SC 86. The Court is invested with discretion, upon regard being had to the facts and circumstances each case, to entertain a writ petition notwithstanding the availability of statutory remedy. The latest decision of the Supreme Court in Whirlpool Corporation u. Registrar, T.M. Mumby and others, JT 1998 (2) SC 243,

is a case on point wherein it was held :

'Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.

But the alternative remedy has been consistently held by this Court not to operate as bar in at least three contingencies, namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.'

5. The case on hand comes in the first and second category of exceptions aforestated and, therefore, In the fact-situation of the present case. I do not feel persuaded to dismiss the writ petitions by reason of statutory alternative remedy being available under the provisions of the U. P. Public Service Tribunal Act. 1986. The preliminary objection raised on behalf of the respondents does not commend itself for acceptance and is accordingly overruled.

NATURE OF APPOINTMENT

6. Appointments in question were made on the basis of recommendation made by a duly constituted Selection Committee seemingly against substantive ^vacancies notified to the general public and the Kshetriya Seva Yojan Adhlkari, Meerut vide letter dated 8.8.97. But in the appointment letters issued to the petitioners, appointments were stated (o be temporary liable to be terminated at any time without notice. Question is what was the real nature of appointments. In Civil Misc. Writ Petition No. 5276 of 1978, Km. Madhu. Jain v. Chancellor, Bundelkhand University and others decided on 19th Jan. 1979. similar questions were encountered a Division Bench of this Court. Km. Madhu Jain, the petitioner therein, had been selected by the Selection Committee for appointment on a substantive post but the Committee of Management chose to appoint her on a temporary basis for one year and obtained approval of the Vice-Chancellor

accordingly. The Division Bench held that it was not open to the Managing Committee to make such an appointment and that in the fact situation of the case. Km. Madhu Jain would be deemed to have been appointed on probation. The argument that having accepted temporary appointment fully cognizant of the fact that the selection had been made on the basis of an advertisement for a substantive post, she would be precluded from claiming that her appointment should be deemed to be an appointment on substantive post, was repelled by the Division Bench. Following the said decision, another Division Bench of the Court held in Dr. (Km.) Ranjana Saxena v. Vice Chancellor, Rohitkhand University, Bareilly, 1980 UPU3EC 225, that when Selection Committee was constituted to select a candidate for appointment on substantive post, it was not open to it to make the recommendation for appointment on temporary basis. The appointment in the situation was taken to be a substantive appointment. On the basis of these decisions and upon regard being had to the facts andcircumstances of the present case. I am of the considered view that notwithstanding the fact that in the appointment letters, the appointment in question were recited as temporary, the petitioners would be deemed to have been appointed in substantive capacity.

NATURAL JUSTICE AND LEGITIMATE EXPECTATION.

7. The next question of vital moment that calls for being determined pertains to applicability of the principle of natural justice and doctrine of legitimate expectation in service jurisprudence particularly in the fact-situation of the case on hand. To begin with, it may be observed that right to livelihood is an indissoluble facet of right to life engrafted in Article 21 of the Constitution, wherein it is provided in no uncertain terms that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The procedure prescribed by law has been judicially, interpreted to signify a procedure, which is just, fair, and reasonable. Reasonableness and fair-play in State action are regarded as a facet of fundamental right to life and liberty guaranteed by Article 21 and right to equality before law and equal protection of law guaranteed by Art. 14 of the Constitution. A person inducted (n Government Service in flagrant antagonism of rules and sans there being any post or vacancy, can have no legitimate expectation to be allowed to endure in service but if appointed in purported observance of the service rules

ostensibly against a vacant post, then such appointee can legitimately expect that his services would not be terminated as 'no longer required' except in due observance of a reasonable and fair procedure in accordance with the principles of transparent system of governance. Every public servant has a legitimate expectation of being dealt with by his master, throughout the entire field of his employment, in consonance with the rule of law and other fundamental principles of transparent system of governance envisaged by the Constitution. Termination intransgression of the limits of such legitimate expectation is an instance verging on violation of fundamental rights guaranteed by Articles 14 and 21 of the Constitution. The Government has a duty to act fairly and to adopt a nail-studded procedure, which is fair play in action, 'natural justice' and legitimate expectation' are thus- regarded as a facet of fundamental rights guaranteed by Articles 14 and 21 of the Constitution in the sense explained above and, therefore, breach of right to 'natural justice' and failure to consider and give due weight to 'legitimate expectations' of public servants/citizens may provide justification for invoking writ jurisdiction.

8. Justice G. P. Singh m his treatise 'Principles of Statutory interpretation' has succinctly expounded the proposition as under :

'Purely administrative bodies are also bound to act justly and fairly which may bring in the requirement of natural justice, as also the duty to give reasons. A legitimate expectation as distinguished from a right of receiving some benefit or of being heard before an adverse order is passed may by itself furnish a ground for challenge to an order if it is passed without hearing the person having such legitimate expectation. Stated briefly, when a statute confers power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words or necessary intendment. This principle applies also to cases where administrative action has its origin in common law or prerogative, but duty to hear may be negatived on grounds of national security or like causes.' (See also O' Reilly v. Mackman, (1982) 3 All ER 1124 ; State of Kerala v. K. C. Madhavan, AIR 1989 SC 49 ; Indian. Aluminium Co. Ltd. v. Karnataka Electricity Board. AIR 1992 SC 2169 ; Navjyoti Co-op. GroupHousing

Society u. Union of India, AIR I993SC 155.

9. The principle has been explained by the Supreme Court inFood Corporation of India u. M/s. Kamdhenu Cattle Feed industries. (1993) 1 SC 71, as under :

'(7) In contractual sphere as inall other state actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness ts a significant facet. There is no unfettered discretion in public law ; A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fair-play in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decisions in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of his exercise by judicial review.

(8) The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of theprinciple of non-arbltrarinc^s, anecessary concomitant of the ruleof law. Every legitimate expectationis a relevant factor requiring dueconsideration in a fair decision-making process. Whether theexpectation of the claimant isreasonable or legitimate in thecontext is a question of fact in eachcase. Whenever the question arises,it is to be determined not accordingto the claimant's perception but ina larger public interest whereinother more importantconsiderations may outweigh whatwould otherwise have been thelegitimate expectation of theclaimant. A bona fide

decision ofthe public authority reached in thismanner would satisfy therequirement of non-arbitrarinessand withstand judicial scrutiny. Thedoctrine of legitimate expectationgets assimilated in the rule of lawand operates in our legal system inthis manner and to this extent.'

10. In M. P. Oil Extraction v. State of M. P., (1997) 7 SCC 592, it has been held that 'doctrine of legitimate expectation' operates in the domain of public law and in appropriate cases, constitutes a substantive and enforceable right. There is no denying the fact that there may be areas such as matters relating to defence and national security where- wider issues of national interest may outweigh that which otherwise would have been legitimate expectation. Barring these exceptions, violation of fundamental rights would be actionable per se, i.e., without proof of damages and in appropriate cases, the State may be held liable to pay compensation for infringement of fundamental rights. Liability to pay damages in such cases, is not hedged in by the limits including the doctrine of sovereign immunity, which ordinarily apply to an action in Tort. The services of the petitioners herein were terminated as 'no longer required'. The expression 'as no longer required' connotes vagueness in that it does not indicate as to why were the services of the petitioners not required. It is the need of a transparent system of governance that dispensation ofservices of public servants by using the phraseology 'services no longer required' be excoriated as it gives fillip to avoidable litigation and tends to violate Articles 14, 21 and 41 of the Constitution. !n the counter-affidavit, it has been stated that the appointments were not relatable to any vacancies and were made as being discordant with the relevant service rules and further that some of the appointees in Meerut Region happened to be kith and kin of the Appointing Authority i.e.. The Regional Transport Officer, Meerut. The Court is of the view that for a fair decision of the question whether appointments which were ostensibly made qua the permanent vacancies after giving prior intimation of the vacancies to higher authorities and after advertising the vacancies and calling the names of candidates from the Employment Exchange were vitiated because of the non-cornpliance of any substantial provisions embodied in the service Rule or for the reason that appointments were not relatable to any vacancy or for any other valid reasons, an opportunity ought to have been proffered to the appointees to show cause as to why the appointments

be not rescinded or service be not terminated for the reasons aforestated. The orders terminating the services of the petitioners are, in the opinion of the Court, vitiated owing to non-compliance with the rules of natural justice. The view I am taking, is covered by the decision of the Supreme Court in Basdeo Tiwary a. Sido-Kanhu University and others, JT 1998 16) SC 464 ; Shridhar v. Nagar Palika. Jaunpur. AIR 1990 ; Shrawan Kumar Jha v. State of Bihar, 1991 Supp. (1) SCC 330 : and a decision of this Court in Rats Ahmad v. State of U. P. and others, (1998) 2 UPLBEC 1232.

11. In Basdeo Tiwary (supra), the appointment of the appellant therein on the post of Lecturer was terminated on the ground that on the relevant date, the Syndicate had no power to make appointment of the Lecturer and therefore, his appointment was not lawful. Noopportunity was afforded to the appellant therein before terminating his appointment. The writ petition challenging the order of termination came to be dismissed by the High Court. Reliance was placed on Section 35 (3) of the Bihar Universities Act. 1970, which enables termination 'at any time without notice' of any appointment or promotion 'made contrary to the provisions if the Act. Statutes or in any irregular or unauthorised manner.' The Supreme Court after noticing its earlier decisions in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, JT 1990 13) SC 725 ; Mohinder Singh Gill and others v. Chief Election Commissioner and others. AIR 1978 SC 851 and S. L. Kapoor v. Jagmohan and others, AIR 1981 SC 136, allowed the appeal and set aside the order passed by the High Court holding, inter alia, as under :

'(9) The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14 for, natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well-settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, JT 1990 (3)

SC 725.

(10) In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in thestatute under which the impugned action is being taken does not exclude hearing--it may be implied from the nature of the power--particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the Court merely supplies omission of the Legislature, (vide Mohinder Singh Gill and another v. Chief Election Commissioner and others, AIR 1978 SC 851 and except in case of direct legislative negation or implied exclusion. Vide S.L. Kapoor v. Jagmohan and others, AIR 1981 SC 136---

(11) In the light of these principles of law. we have to examine the scope of provision of Section 35 (3) which reads as follows :

'35 (3) Any appointment or promotion made contrary to the provisions of the Act, statutes, rule's, or regulations or in any irregular or unauthorised manner shall be terminated at any time without notice.' (12) The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to act. rules, statutes and regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act. statutes, rules or regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act. etc- If in a given case such exercise is absent, the condition precedent stands unfilled. To arrive at such a finding necessary enquiry will have to be held and in holding such an enquiry the person whoseappointment is under enquiry will have to be issued to him. If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his

absence, such a conclusion would not be just, fair and reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's case. In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act. statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice.....

(13) Admittedly in this case notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.'

12. In Shridhar v. Nagar Palika Jaunpur (supra), appointment by direct recruitment to the post of Tax Inspector was cancelled oy the Prescribed Authority/Commissioner on the ground that the appointment ought to have been made by promotion. Writ petition challenging the order of Commissioner was dismissed. The Supreme Court held as under :

'(8) The High Court committed serious error in upholding the order of the Government dated 13.2.1980 in setting aside the appellant's appointment without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violationof principles of natural justice is rendered void. There is no dispute that the Commissioner's order had been passed without affording any opportunity of hearing to the appellant, therefore the order was illegal and void. The High Court committed serious error in upholding the Commissioner's order setting aside the appellant's appointment. In this view, orders of the High Court and the Commissioner are not sustainable in law.

13. In Shravan Kumar Jha (supra), certain Asstt. Teachers were appointed by the District Superintendent of Education. Dhanbad, by order dated May 28, 1988. The appointments were cancelled by the Dy. Development Commissioner vide order dated Nov. 2. 1988 on the ground that the District Superintendent of Education

had no authority to make the appointment. There was a controversy as to whether the appointees had joined their duties before appointments were cancelled. The appellants therein asserted that they had joined their respective Schools but this fact was repudiated by the State. The Supreme Court held that it was not necessary to go into the disputed questions of fact for in their Lordships' opinion, the impugned order cancelling the appointment was liable to be quashed on the ground that the appellants therein had not been given an opportunity of hearing before cancelling their appointments. The Supreme Court observed 'It is well-settled that no order to the detriment of the appellant could be passed without complying with the rules of natural justice. It set aside the impugned orders of cancellation dated Nov. 3, 1988 on this short ground.' The competent authority was, however, granted liberty to give an opportunity of hearing to the appellants therein and thereafter, give a finding as to whether the appellants were validily appointed as Asstt. teachers.

14. In Mohd. Rais Ahmad v. State of U. P. and others, (1998) 2UPLBEC 1232, an order of cancellation of appointment of ad hoc/temporary employees passed without giving opportunity of hearing to the employees was quashed by this Court relying on Supreme Court decision in Shrauan Kumar Jha (supra).

15. For the respondents, reliance was placed on a decision of the Supreme Court in Ashwani Kumar and others v. State of Bihar and others. JT 1997 (1) SC 243. in order to bolster the contentions that where appointments are found to have been made in derogation of relevant service rules and against non-existent posts. the principles of natural justice need not be complied with as a condition precedent to termination of such illegal appointments. The decision therein has no application to the facts of the present case. The said decision. In my opinion, is an authority on the point that if initial entry in the service is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent of such non-existing vacancies could never survive for consideration and even if regularisation or confirmation is given, it 'would amount to decorating a still-born baby'. So far as principles of natural justice are concerned, the Apex Court observed in that case that 'principles of natural justice will vary from case to case, from circumstance to circumstance, and from situation to situation' and further that they 'cannot be

subjected to strait-jacket formula'. It would appear that in that case, when the matter reached the High Court, the State was directed to appoint a Committee to thoroughly investigate entire matter and pursuant to the direction given by the High Court, the matter was thoroughly delved into by High-powered Committee and on an enquiry, it was found that appointments were made without abiding by the procedure for appointments and without publication of advertisement, etc. and in the fact-situation of the case, the Apex Court held that 'thus, the basic principles of natural justice cannot besaid to have been violated by the Committee which ultimately took decision on the basis of the personal hearing given to the concerned employees and after considering what they had to say regarding their appointments. Whatever was_ submitted by the concerned' employees, was taken into consideration and then Committee came to a firm decision to the effect that all these appointments made by Sri Malik were vitiated from the inception and were required to be set aside and that is how impugned termination orders were passed against the appellant. On the facts of these cases, therefore, it cannot be said that principles of natural justice were violated or full opportunity was not given to the concerned employees to have their say in the matter and before their appointments were recalled and terminated.'

16. The counsel forrespondents then placed credence on a Division Bench decision of this Court in Bhullan Singh and another v. Dy, Director of Education, Varanasi and others. 1998 (3) ALR 532. On facts, that case is distinguishable inasmuch as the Court in that case recorded a finding that the services of the appellants therein were terminated because of the reasons that the appellants were illegally and arbitrarily appointed after the list of the selected candidates had run out in preference to the candidates who were placed in the waiting list above the appellants therein. It was in the fact-situation of that case, that the Court held that the Supreme Court decision in Shrawan Kumar Jha v. State of Bihar (supra) would not apply and the Court accordingly declined to interfere on the ground of orders having been passed in violation of the principles of natural justice.

17. The learned counsel for the respondents placed reliance on a decision of the Court in Shree Pal Singh . District Magistrate, Mainpurt and others, 1996 AWC 850, in which it was held as under :

'Therefore, mere breach of any principle of natural justice is of no consequence, and cannot nullify theorder if such order does not affect any vested right of the aggrieved person. Non-observance of-any principle of natural justice must result in loss of something of substance in order to entitle the petitioner to invoke the jurisdiction of High Court under Article 226 of the Constitution of India.'

The decision relied upon by the counsel appearing for the respondents was given in the fact-situation of that case. In S.L. Kapoor v- Jagmohan and others, AIR 1981 SC 136, the Supreme Court has expatiated upon the proposition in no uncertain language that the violation of principles of natural justice is itself a prejudice and as I have taken the view that termination of services of the petitioners in violation of principles of natural justice and without giving due weight to their legitimate expectation, is violative of their fundamental right guaranteed by Articles 14 and 21 of the Constitution. I m of the considered view that it is not a case were it can be said that the impugned orders of termination did not affect 'any vested right' of the petitioners.

18. As a result of foregoing discussions, I veer round to the view that the impugned orders which have been passed in violation of fundamental principles of natural justice and doctrine of legitimate expectation are unsustainable.

19. The learned counsel for the respondents then canvassed that in similar situation. Writ Petition No. 1441/SSof 1998. Sant Humor v. State of U. P. and others, came to be dismissed by the Lucknow Bench of the Court vide order dated 8.5.1998, On a perusal of the judgment aforestated, I feel called to the view that the said decision was given in the context of the arguments advanced and the decisions cited therein. The questions discussed herein do not appear to have been raised and taken into reckoning in the said judgment. Dismissal of the said Writ Petition No. 1441/SS of 1998 would, therefore, not affect the decision in these petitions. So far as the order passed by the Court in CivilMisc. Writ Petition No. 19060 of 1990, Vikas Sachan and another u. State of U. P. and others, that too has no relevance inasmuch as there the only order passed was 'Heard Counsel. The petitioners are temporary employees and hence have no right to the post. The petition is dismissed. Sd. M. Katju Dt. 7.7.1998.'

20. The Supreme Court decision in Suresh Chand Varma v. Chancellor. Nagpur University, AIR 1990 SC 2023; relied upon by the respondents too has no application to the facts of the present case inasmuch as. there, the proposition of law laid down was that if services are to be terminated in view of change in the position of law and not on ground of demerits or misdemeanour of the individual candidates, it is not necessary to hear the individuals before their services are terminated.

ACTING AT THE BEHEST OF SUPERIOR OFFICERS.

21. The services of the petitioners were terminated by the Appointing Authority on direction given by the Transport Commissioner. Prof. Wade states the principle thus :

'An element which is essential for the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred and by no one else.'

De Smith has expounded the principle as under :

'An authority entrusted with the discretion must not. in the purported exercise of its discretion, act on the dictation of another body or person.....Authorities directlyentrusted with the statutory discretion's, be that executive officers or members of distinct Tribunals, are usually entitled and are often obliged to take into account consideration of public policy, and in some context the policy of a Minister or of the Government as a whole may be a relevant factor in weighing those considerations ; but this will not absolve them from their duty to exercise their personal judgment inindividual cases unless explicit statutory provision has been made for them to be given by binding instructions by a superior, or (possibly) unless the cumulative effect of the subject-matter and their hierarchical subordination (in the case of civil servant and Local Government Officers) make it clear that it is constitutionally proper for them to receive and obey instructions conveyed in the proper manner and form.'

22. There is no denying the fact that relationship of a master and servant is between the Government and the employees irrespective of which is the

Appointing Authority and in that view of the matter, the Government may lay down norms and guidelines for guidance of the Appointing Authority and violation of such norms and guidelines may. In appropriate cases, call for an action against the officer concerned but the statutory power conferred upon the Appointing Authority cannot be-usurped by superior officer. The orders impugned herein having been passed on the dictates of the superior officer are liable to be quashed.

23. In view of the above discussion, the writ petitions commend themselves to be allowed excepting in so far as the petitioner Shakil Ahmad, one of the petitioners of Civil Misc. Writ Petition No. 13799 of 1998 is concerned, for the reason that Writ Petition No. 43016 of 1997 filed by him has already been dismissed vide order dated 17.12.1997 and the order of termination of his services has attained finality.

24. Accordingly, the writ petitions succeed and are allowed and impugned orders are quashed excepting the order of termination of services of Shakil Ahmad. The petitioners excepting Ahmad, shall be resituated in service with full back salary and other allowances with liberty reserved to the Competent Authority, to pass such orders as it may deem fit and proper after giving show cause notice to individual appointees.