

M. Gopalakrishnaiah Vs. Union of India

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Court : Delhi

Decided On : May-10-1994

Reported in : 1994IIAD(Delhi)782; [1995]82CompCas252(Delhi); 1994(30)DRJ251; ILR1995Delhi283; 1994LabIC2288; (1995)IILLJ933Del; 1994RLR408

Judge : D.P. Wadhwa and; D.K. Jain, JJ.

Acts : [Constitution of India](#) - Article 310(2)

Appeal No. : Civil Writ Petition No. 3157 of 1993

Appellant : M. Gopalakrishnaiah

Respondent : Union of India

Advocate for Def. : Mr. Sarin

Advocate for Pet/Ap. : R.K. Anand,; Lokesh Sawhney,; M.M. Sareen,;

Judgement :

D.P. Wadhwa, J.

(1) We are reminded of the memorable words of lord Atkin in his dissenting judgment in L. Liversidge v. Anderson and another , 1941(3) All ER 338 : ' In England amidst the clash of arms the laws are not silent. They may be changed,

but they speak the same language in war as in peace.' However, when a huge security scam involving thousands of crores of rupees surfaced, it would appear law became different for the petitioner who faced the ignominy of his services having been terminated in violation of law of the land.

(2) The petitioner, who was at the relevant time Executive Director (whole-time Working Director) of the Bank of Maharashtra and Was also looking after the day to-day affairs of the bank until the appointment of regular Chairman and Managing Director or under further orders of the Central Government, was visited with order of termination dated 9 July 1993 issued by the Central Government in the exercise of powers conferred by sub-clause (I A) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970 (for short 'the scheme') made under section

(3) The Banking Act provided for the acquisition and transfer of the undertakings of certain banking companies, and 'corresponding new bank', under clause (d) of section 2 of the Banking Act, means the Bank of Maharashtra and other banks mentioned in the first schedule to that Act. Section ') of the Banking Act under which the scheme was framed, in relevant part, is as under :- '9.

(1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely :- (a) the capital structure of the corresponding new bank, so however that the paid-up capital of any such bank shall not be in excess of rupees fifteen crores; (b) the constitution of the Board of directors, by whatever name called, of the corresponding new bank and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient; (c) the reconstitution of any corresponding new bank into two or more corporations, the amalgamation of any corresponding new bank with any other corresponding new bank or with another banking institution, the transfer of the whole or any part of the undertaking of a corresponding new bank to any other banking institution or the transfer of the whole or any part of the undertaking of any other banking

institution to its corresponding new bank; (d) such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Act.

(3) Every Board of Directors of a corresponding new bank, constituted under any scheme made under sub-section (1), shall include - (a) representatives of the employees, and of depositors, of such bank, and (b) such other persons as may represent the interests of each of the following categories, namely, farmers, workers and artisans, to be elected or nominated in such manner as may be specified in the scheme.

(4) (5).....' Under clause (e) of clause 2 of the Scheme, 'nationalized bank' means a corresponding new bank constituted under sub-section

(1) of section 3 of the Bank- ing Act. Under clause 3, the Central Government is required to constitute the Board of a nationalized bank consisting of not more than two whole-time Directors, of whom one shall be the Managing Director, to be appointed by the Central Government after consultation with the Reserve Bank. As to who would be other Directors also finds mentioned in this clause. Then under clause 5, the Central Government is also to appoint one of the Directors to be the Chairman of the Board after consultation with the Reserve Bank and the Chairman is to preside over the meetings of the Board. Under clause 6, a Managing Director is to be the Chief Executive Officer of the nationalized bank and shall exercise powers and discharge such duties as may be delegated to him by the Board. Under clause 7, same person may hold the office as Chairman and Managing Director. Clause 8 is as under :- '8. Term of office and remuneration of a whole-time Director including Managing Director,- (1)A whole time Director, including the Managing Director, shall devote his whole time to the affairs of the nationalized bank and shall hold office for such term not exceeding five years as the Central Government may, after consultation with the Reserve Bank, specify and shall be eligible for reappointment. (1A) Notwithstanding anything contained in sub-clause (1), the Central Government shall have the right to terminate the term of office of a whole-time Director including the Managing Director, at any time before the expiry of the term specified under that sub-clause by giving to him notice of not less than three months in writing or three months' salary and

allowances in lieu of notice; and the whole-time Director, including the Managing Director, shall have also the right to relinquish his office at any time before the expiry of the term specified under that sub- clause by giving of the Central Government notice of not less than three months in writing. (1B) Any reference to a whole-time Director, including the Managing Director, in sub-clause (1 A) shall be construed as including a reference to the person holding office as such at the commencement of the Nationalized Banks (Management and Miscellaneous Provisions) (Second Amendment) Scheme, 1976.

(2) A whole-time Director, including the Managing Director, shall receive from the nationalized bank such salary, allowance, fees and perquisites, and be governed by such terms and conditions, as the Central Government may determine, after consultation with the Reserve Bank.

(3) If a whole-time Director, including the Managing Director, is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government may, after consultation with the Reserve Bank, appoint another person to act in his place during his absence.

(4) The Central Government may, if it is satisfied that it is expedient in the interests of the nationalized bank so to do, remove a whole-time Director including the Managing Director from office; Provided that no such removal shall be made except after (a) consultation With the Board, and (b) giving a reasonable opportunity to the whole-time Director, including the Managing Director, of showing cause against the proposed action.' Under clause 9, term of office of other Directors except the whole-time Directors, is not to exceed three years as the Central Government may specify and shall be eligible for reappointment. The scheme also provides for constitution of committees of the Board and one of such committees is the Managing Committee.

(4) Petitioner contends that he has been removed from service in violation of subclause (4) of clause 8 of the scheme and that it is not a case of termination simpliciter and in any case sub- clause (1 A) is void being unconstitutional. The petitioner was appointed in the Andhra Bank Limited before it became a

nationalized bank and he became the General Manager of the Andhra Bank in 1983. He would have superannuated on 30 June 1997. In October 1992 he was offered and appointed as whole-time Director in the Bank of Maharashtra. This was a tenure appointment. He assumed charge of this post on 10 October 1992 and tenure was to end on 30 June 1997. Before the petitioner was so appointed as whole-time Director of the Bank of Maharashtra, Central Government had obtained all necessary permissions and clearances from the Central Vigilance Commission, New Delhi; Central Vigilance Officer, Andhra Bank; Central Bureau of Investigation; and Banking Divisions of the Department of Economic Affairs in the Ministry of Finance, Government of India. The appointment of the petitioner as whole-time Director in the Bank of Maharashtra was to be governed by the provisions of the scheme, and further as per terms and conditions of the said tenure post the petitioner was deemed to have retired as General Manager of the Andhra Bank on 9 October 1992. It was a new appointment altogether in the tenure post. The notification appointing the petitioner as whole-time Director is dated 8 October 1992 and is as under :- Notification In pursuance of sub-clause (a) of clause 3 read with sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government after consultation with the Reserve Bank of India, hereby appoints Shri M. Gopalakrishnaiah, presently General Manager, Andhra Bank, as a whole-time Director (designated as the Executive Director) of the Bank of Maharashtra for a period commencing with the date of his taking charge and ending with 30th June, 1997. sd/- (K.G.Goel) Director ' By letter dated 11 May 1993 the petitioner was asked to look after the day-to-day affairs of the Bank of Maharashtra until the appointment of a regular Chairman and Managing Director of the bank-This letter is as under :- 'Dated the 11th May, 1993. Dear Shri Gopalakrishnaiah, As you are aware. Government have vide notification No. 9/60/91-B.O.I dated 5th May, 1993 appointed Shri T.K.K. Bhagavat as Chairman and Managing Director of the Indian Overseas Bank for the period from the date of his taking charge and up to 31st July, 1994. You are advised to look after the day-to-day affairs of the Bank of Maharashtra until the appointment of a regular Chairman and Managing director of the bank or until further orders of the Government. The financial and administrative powers of the Chairman and Managing Director shall, however, be exercised by

the Board of Directors of the Bank. With regards, Yours sincerely, sd/- (K.G. GOEL)'

(5) Petitioner says that in first week of July 1993 from newspaper reports he came to know that the Central Government was taking steps to remove the petitioner from his post of Executive Director in the Bank of Maharashtra for his alleged role in the 'security seam' during his tenure as General Manager in the Andhra Bank. He says this could not be so as he had been appointed as Executive Director only after due clearance had been obtained from various authorities, and that he was not involved in any irregularity or security seam during his tenure in the Andhra Bank. It also came to the knowledge of the petitioner that Mr. M. Mahadevan, Managing Director of the State Bank of India, and Mr. R.S. Pai, Executive Director of Syndicate Bank, had since been removed from service without assigning any reason. This led the petitioner to file the present petition on 9 July 1993 praying for issue of a writ of mandamus directing the respondents not to remove/terminate his services, and to issue a writ of certiorari quashing any order of removal that may be passed in the meantime without observing the principles of natural justice. The respondents are Union of India through the Secretary, Ministry of Finance, and also Union of India through the Additional Secretary (Banking Division), Department of Economic Affairs in the Ministry of Finance, Government of India, New Delhi.

(6) In its letter dated 30 October 1992 the Central Government informed the petitioner of his salary, allowances, perquisites and other terms and conditions of his appointment as the Executive Director of the Bank of Maharashtra. In para 20 of annexure to this letter giving the details of the allowances, fees, perquisites, etc., it was mentioned that the bank executives on their appointment to their Board level posts would be deemed to have retired from the bank and would take up their tenure appointments as whole time Directors as fresh appointees, and that they may avail all their entitlements like encashment of leave, provident fund, gratuity, etc., earned by them in the service to the bank in accordance with the relevant rules and regulations governing them at the time they demit the officer level posts. Under para 21 of this annexure, all appointments that a Managing Director/Executive Director may take up at the board level posts would constitute a continuous

service and retirement benefits for the entire service in board level posts would become available to him at the time of his final demission of board level office. In terms of para 20 aforesaid, the petitioner retired from the service of the Andhra Bank as General Manager on 9 October 1992. Under para 21, various entitlements like leave, G.P.F., L.T.C., gratuity, house building advance, motor car advance, etc., would be permitted to be carried over from one board level post to another, whether in the same nationalized bank or another.

(7) As to how the services of the petitioner as Executive Director came to be terminated, it may well be to refer to the return filed by the respondents, but one thing is clear that it is on account of action or inaction as General Manager to the Andhra Bank in the security scam, as we would presently see. We may also note that during the course of arguments it is pointed out to us that disciplinary proceedings have also been initiated against certain other officers of the Andhra Bank, but their services have not been terminated and that they are facing enquiry. Had the petitioner continued as General Manager of the Andhra Bank he would have retired on 30 June 1997 and his services as a General Manager could also not have been terminated without proper enquiry. It is not that it is only Andhra Bank which is stated to have been involved in the security scam but other banks and their subsidiaries too, but we are not concerned with that. In the return which the respondents filed earlier before the amendment in the writ petition, the respondents said as under :- '2. That the writ petition as filed, is not maintainable as the petitioner did not hold any civil post under the Union or the State. The salaries and emoluments of the Petitioner are not paid out of the Consolidated Fund of the Union and are paid by the Bank of Maharashtra. The services of the Petitioner have been terminated in a bonafide exercise of power under clause 8(1A) of the Scheme and after careful deliberation and enquiry into all the facts to ascertain the suitability and desirability of his continuance as the Executive Director, as set out in detail hereinafter in the Reply. It is pertinent to state that the Petitioner is neither a permanent employee of the Bank of Maharashtra to whom the Bank of Maharashtra Officers Service Regulations apply. The appointment of the Petitioner was purely contractual and is governed by the terms and conditions of his appointment letter and the Scheme. The Petitioner has not been removed from service. His term has been simply terminated without any incidence of

punitive action or loss of benefits. Accordingly, there was no requirement to issue show cause notice under the Scheme. The show cause notice is required to be served only if action was taken under clause 8(4) of the Scheme and not otherwise which would have entailed punitive consequence, stigma and loss of terminal benefits. The petitioner's appointment as Executive Director, Bank of Maharashtra was purely contractual and was subject to the terms and conditions of the Scheme and the appointment letter issued. The Petitioner entered into the contract with the Respondent of his own free volition and fully cognizant of the aforesaid terms and conditions. The Petitioner is bound by the same and cannot now assail the same. The pleas in the writ petition alleging violation of the principles of natural justice and demanding a pre-decisional hearing are misconceived as the same are attracted only for action under clause 8(4) which contemplates removal from service i.e. a punitive action and not for termination simplicities under clause 8(1 A). The petitioner prior to his appointment on contract as Executive Director of Bank of Maharashtra was working as General Manager (Personnel & Central Accounts Departments & Funds), a permanent employee of Andhra Bank. The Reserve Bank of India appointed a committee under the chairmanship of Shri R. Janakiraman, Deputy Governor, Reserve Bank of India to investigate into the irregularities in funds management by Commercial banks and financial institutions (including Andhra Bank) and in particular in relation to their dealings with the government securities, PSU bonds, etc. The Respondents are producing the relevant chapters of the Reports of Mr. Janakiraman concerning Andhra Bank collectively as Annexure-II. After the Third report of Janakiraman Committee, the Reserve Bank of India appointed Shri B.K. Rao, IAS (Retd) former Mines Secretary, Government of India as Special Officer to investigate the role and supervision exercised by the Top management of Andhra Bank and Andhra Bank Financial Services including the Petitioner in the securities transactions. Without prejudice, it is stated, in the instant case, during the course of an enquiry by Shri B.K. Rao, the views of the concerned officers, including the Petitioner were obtained by him. The conclusions of Mr. B.K. Rao's reports in so far as the Petitioner is concerned, may be summarized as under :- i) As General Manager in-charge of Personnel, Central Accounts Department and Funds, he was responsible for exercising supervision over the security transaction

undertaken by the bank including those undertaken on behalf of the broker clients. Despite the risks involved in such transactions undertaken on behalf of brokers, Shri Gopalakrishnaiah did not verify or test-check them in the course of his frequent official visits to Bombay where these transactions were usually undertaken. Even though the transactions were undertaken from 1988 onwards, no executive supervision was exercised by him over this important work at any time. Commenting on the lack of supervision, the Special Officer has observed as follows :-

'It is unfortunate that this aspect of work where in each transaction several crores of rupees are involved and which requires serious attention to their implications at a fairly high level, directly or indirectly, either before the decisions are taken or by reviewing the same periodically has been allowed to follow in a routine and a rut.'

ii) Despite the fact that the problems faced in the security transactions on behalf of brokers and the associated risks were brought repeatedly to the notice of Shri Gopalakrishnaiah by middle and senior level officers, no effective action was taken by him for formulation of proper guidelines for rectification of the irregularities which were taking place. Even when valuable suggestions were made by inspecting officers, these were systematically watered down ultimately leading to non-implementation of the suggestions. The Special Officer has made the following remarks in this regard :- 'It has to be concluded that the Chairman, the Executive Director and the concerned General Manager (Personnel, Central Accounts Department and Funds) are prima-facie guilty of dereliction of duty in refusing to face the facts and lead the supporting staff from the front even when it was utterly needed. It also lends credence to the surmise that the top management was acquiescing with the irregularities for reasons best known to them....'

iii) A note prepared by Shri Gopalakrishnaiah and approved by the Chairman and Managing Director was put up before the Board of Directors on 26.9.91 after the receipt of Reserve Bank of India's guidelines dated 26.7.91 wherein issuing of Bankers Receipts/SGL forms on behalf of their broker clients without safeguarding the bank's interest were listed as transactions which banks should not undertake. However, the Note placed before the Board watered down the severity of the instructions as if such transactions were not objectionable and could be undertaken. A specific statement was also made in the Note that the type of

transactions mentioned in the Reserve Bank of India circular were not being dealt with by the bank's branches. The Board was thus mis-informed and misled, notwithstanding Reserve Bank of India's instructions and the internal evidence to the contrary on record. The Special Officer has observed that 'it is a serious infraction on the part of the Chairman, the Executive Director and the General Manager to misinform the Board like this.'

(8) Even after the news of the scam broke out, a Note dated 29.5.92 and approved by Shri Gopalakrishnaiah was placed before the Board stating that the news item reading Andhra Bank being a reputed bank was a 'misnomer'. The Funds Department and the Central Accounts Department headed by Shri Gopalakrishnaiah were aware of the details of the transactions undertaken on behalf of the brokers, the dangers involved therein and the risks associated therewith as brought out in inspection reports submitted from time to time. In the light of the above, it was highly improper for the management to misinform the Board. iv) In the context of the securities transactions undertaken by the Andhra Bank, there were repeated directions and prohibitions by the Reserve Bank of India cautioning the bank and conveying their concern. The bank's authorities had reassured the Reserve Bank of India that their directions were being followed and implemented even though it was known to the management that in practice the position was otherwise. Thus the top management including the General Manager, Shri Gopalakrishnaiah is guilty of misinforming and misleading even the Reserve Bank of India. The Respondent also considered the recommendation of the Rbi and Rao report in deciding to terminate the contract with the Petitioner under clause 8(1 A) of the Scheme.' Then in the return filed to the amended writ petition, the respondents tried to explain what they had said earlier in their first return. They said :

'It is submitted that under clause 8(1 A) of the Scheme, no enquiry qua the Petitioner is required to be held. It is stated that the deliberation and enquiry referred to in the counter affidavit filed earlier was the deliberation and enquiry which the Government did to satisfy itself regarding the desirability and suitability of Petitioner's continuing in his contractual term. It is not denied that Mr. B.K. Rao did investigate into the securities transactions of Andhra Bank and the role of the

top management, including the Petitioner who was General Manager (Personnel, Central Accounts Department and Funds), of the said Bank. It is stated that during the course of the enquiry, Shri Rao obtained the views of the concerned officers of Andhra Bank including the Petitioner. It is, therefore, wrong for the Petitioner to allege that the enquiry was ex parte and he did not have any opportunity to present his views. There was no question of issuing any chargesheet to the petitioner or furnish him any grounds/evidence regarding misconduct as the action was not taken for his removal under clause H(4) of the Scheme. Termination under clause 8(1 A) of the Scheme does not require the Respondents to furnish to the Petitioner the grounds and reasons for termination of the contractual term and/or the grounds and reasons for forming such an opinion. '

The respondents said that where the Government, on the material and recommendations available to it pursuant to the Rao report, only formed an opinion that it was not desirable to continue with Petitioner as Executive Director, it was not necessary to conduct an enquiry making specific charges against the Petitioner, and that the termination of the petitioner was not arbitrary, whimsical or capricious but based on the opinion formed by the Government. It was further submitted that the respondents had simply averred that the Government had also considered the recommendation of the R.B.I., as well as the Rao report in deciding to terminate the contract with the petitioner under clause K(1 A) of the Scheme.

(9) It is an admitted fact that the impugned action against the petitioner started with a letter from the Governor, R.B.I., that he had agreed with the findings contained in Rao's report and recommending that the petitioner might not be continued as Executive Director, Bank of Maharashtra. R.B.I., had in December 1992 appointed Mr. B.K. Rao, I.A.S. (Retd), as Special Officer for looking into the role of top management of Andhra Bank and A.B.F.S.L. (Andhra Bank Financial Services Limited) in relation to irregularities in the security transactions. Rao had submitted his report to the Governor, R.B.I., in April 1993. Rao in his report observed that the Chairman, Executive Director and the General Manager of the Andhra Bank were jointly and severally responsible in their several acts of omission and commission, and that the top management of the Andhra Bank did not seem to have exercised the necessary executive and supervisory function at

any stage to ensure whether the directions of the R.B.I, were actually being implemented, more particularly in the funds department in the Fort Branch of the Bank in Bombay. The fact, however, remained that whatever be the irregularities funds of Andhra Bank were not involved, and when the Janakiraman Committee submitted its final report in April 1993 it fixed the figure at Rs.4024.45 crores. Andhra Bank is not named one of the banks, though A.B.F.S.L. figures. That is a Government company within the meaning of the Companies Act, 1956. We have not been told how the petitioner was connected with the A.B.F.S.L. though it is stated to be the subsidiary of the Andhra Bank. B.K. Rao was appointed by R.B.I, by its letter dated 28 December 1992 and was assigned the job of looking into and fixing responsibility of the top management in relation to the irregularities in the securities transactions of Andhra Bank and A.B.F.S.L. From the records it is not clear as to when Rao submitted his report, but the letter addressed by the Governor, Reserve Bank of India, recommending action on the Rao's report is dated 17 June 1993.

(10) The petitioner has denied the allegations in his affidavit-in- rejoinder. He said that respondents have themselves averred that the impugned termination order was passed 'after careful deliberations and enquiry into all the facts to ascertain the suitability and desirability of his continuance as the Executive Director, as set out in detail hereinafter in the reply', which would mean that termination order was not an innocuous termination simplicities as it appeared on the face of it. Petitioner said that it was founded on the alleged suitability and desirability of his continuance as Executive Director of the Bank of Maharashtra. He said it was clear that the termination order was in substance an order of removal in disguise. He said this is an order passed under sub-clause (4) of clause and not under sub-clause (1A) of clause 8 of the Scheme, and since procedure prescribed under sub-clause (4) was not followed, the order of termination is void. Petitioner said that that rules of natural justice had also been violated to his prejudice inasmuch as the enquiries conducted by Janakiraman Committee and V.K. Rao were all ex parte when they went into the alleged irregularities in security transactions by the Andhra Bank, and that no opportunity was given to the petitioner to show cause to any adverse finding against him. Petitioner said that he had (lawless career in the Andhra Bank and he performed his duties in best tradition of an officer of the

bank, and there was no cause for the respondents to terminate his tenure as the Executive Director of the Bank of Maharashtra.

(11) As to how sub-clause (I A) of clause 8 of the Scheme is unconstitutional, petitioner referred to various judgments of the Supreme Court. In *West Bengal State Electricity Board and others v. Desh Bandhu Ghosh and others* : (1985)ILLJ373SC , the court was considering the constitutional validity of regulation 34 of the Board's Regulations which provided for termination of the services of a permanent employee by serving three months notice or on payment of salary for the responding period in lieu thereof. The court held this regulation offended Article 14 of the Constitution. It said 'on the face of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious' discrimination. It is a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers.'

(12) In *Central inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and another*, : (1986)ILLJ171SC , rule 9 of the appellant framed for its employees provided for termination of employment for acts other than misdemeanour. It is as under : '(i) The employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice. (ii) The services of a permanent employee can be terminated on the grounds of 'Services no longer required in the interest of the Company' without assigning any reason. A permanent employee whose services are terminated under this clause shall be paid 15 days' basic pay and dearness allowance for each completed year of continuous service in the Company as compensation. In addition he will be entitled to encashment of leave at his credit. ' The court held that clause (i) of rule 9 was not only void under section 23 of the Contract Act, 1872, being opposed to public policy but was also ultra virus Article 14 of the Constitution, it being arbitrary and unreasonable and it wholly ignored audi altram partem rule.

(13) In *(.)P. Bhandari v. India Tourism Development Corporation Ltd. and others*, , the appellant questioned the constitutional validity of rule 31 of the I.T.D.C. (Conduct, Discipline and Appeal) Rules, 1978, This rule provided as under :- 31. Termination of services The services of an employee may be terminated by giving such notice or notice pay as may be prescribed in the contract of service in the following manner :- i) to iv) v) of an employee who has completed his probationary period and who has been confirmed or deemed to be confirmed by giving him 90 days' notice or pay in lieu thereof.' , court said that this rule could not co-exist with Articles 14 and 16(1) of the [Constitution of India](#), and that the said rule must, therefore, die, so that the fundamental rights guaranteed by the aforesaid constitutional provisions remained alive. For, otherwise, the court said, the guarantee enshrined in articles 14 and 16 of the Constitution could be set at naught simply by framing a rule authorizing termination of an employee by merely giving a notice. The court further said that in order to uphold the validity of the rule in question it would have to be held that the tenure of service of a citizen who took up employment with the State would depend on the pleasure or whim of the competent authority unguided by any principle or policy, and that the services of an employee could be terminated even though there was no rational ground for doing so, even arbitrarily or capriciously. The court struck down the rule.

(14) In the *United Bank Officers Association v. United Bank of India*, Jt 1986 S.C. 246, the court gave a very brief judgment and it is as under:-'

'1. In view of the judgment of this Court in *West Bengal Electricity Board and Ors. v. Desh Rundhu Ghosh & Ors*, : (1985)ILLJ373SC and *Central Inland Water transport Corporation Ltd. & Anr. v. Brejo Nath Ganguly and another*, Civil Appeal No. 4412 of 1985, this Writ Petition is allowed and it is declared that Regulation 20 of United Bank of India (Officers) Regulation, 1979 is unconstitutional and void. The four officers whose services were terminated in pursuance of Regulation 20 of United Bank of India (Officers) Regulation, 1979 and who have filed Writ Petition in the High Court will be reinstated forthwith and they will be entitled to arrears of salary. The management may take such disciplinary action as they are entitled to take in accordance with the law. The Writ Petition is disposed of accordingly.'

(15) In the Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, : (1991)ILLJ395SC , a Constitutional Bench of the Supreme Court again considered the question of constitutional validity of the right of the employer to terminate the services of permanent employees without holding any enquiry in certain circumstances by reasonable notice or pay in lieu of notice. In this case, regulation 9 of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, provided for termination of service, and it is as under:- '9. Termination of service: (a) Except as otherwise specified in the appointment orders, the services of an employee of the authority may be terminated without any notice or pay in lieu of notice:- (i) During the period of probation' and without assigning any reason thereof. (ii) For misconduct. (iii) On the completion of specific period of appointment. (iv) In the case of employees engaged on contract for a specific period, on the expiration of such period in accordance with the terms of appointment. (b) Whether the termination' is made due to reduction of establishment or in circumstances other than those mentioned at (a) above, one month notice or pay in lieu thereof will be given to all categories of employees. (c) Where a regular/temporary employee wishes to resign from his post under the authority he shall give three/one month's notice in writing or pay in lieu thereof to the Authority provided that in special cases, the General Manager may relax, at his discretion, the conditions regarding the period of notice of resignation or pay in lieu thereof.' The court was considering the constitutional validity of regulation 9(b)' which provided for termination of services by giving one month's notice or pay in lieu thereof in respect of. all categories of employees not falling in clause(a). By majority (4:1) the court held the regulation to be arbitrary, unfair, unjust, unreasonable and opposed to public policy, and unconstitutional being violative of Articles 14, 16(1), 19(1)(g) and 21 of the Constitution. Sabyasachi Mukharji, Cj, in his dissenting judgment said that whenever question of exercise of power of termination of permanent employees by reasonable notice without holding any enquiry arose, the extent of the power should be read in the manner indicated by him in the judgment. He said he reiterated that such powers could be exercised for the purpose of the Act which would be determinable by the preamble and by relevant enacting provisions and the contingencies for the exercise of the power exercised by authority competent and independent enough and should be

articulated by reasons stated even if not communicated. He said these were the limitations inherent and latent in the framework of our Constitution and the power with these limitations was valid.

(16) In *Dr. I .P. Aggarwala V. Union of India and Others*, : (1993)ILLJ825SC , the appellant Aggarwal was appointed as Director of the All India Institute of Medical Sciences (for a period of five years or till he attained the age of 62 years whichever was earlier). He was appointed w.e.f. February 18, 1979 and confirmed in the post w.e.f. February 19, 1980. By order dated November 24 1980, he was retired from the service, in public interest with immediate effect, by giving him three months pay and allowances, in lieu of notice. Under the relevant recruitment rules, the post of Director was to be filled in by direct recruitment and the post of Director was a tenure post for 5 years inclusive of one year probation. The question before the Supreme Court was whether Dr. Aggarwal could be prematurely retired before completion of his tenure, or in other words whether the service law concept of 'premature retirement in public interest' was applicable to a tenure post filled by way of direct recruitment. The court held that simply because the appointment letter of Dr. Aggarwal mentioned that 'he is appointed for a period of five years or till he attains the age of 62 years', the appointment did not cease to be a tenure post. Such a person could not be retired prematurely curtailing his tenure of five years. In the case of Dr. Aggarwal it could be curtailed only in the event to his attaining the age of 62 years before completing the said tenure. The court then observed as under :-

'TENURE means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant.'

The court said under what circumstances could an appointment for a tenure be cut short was not a matter which required its immediate consideration in that case

because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. The court said that its earlier judgment in *Dr. Bool Chand v. Theb Chancellor, Kurukshetra University*, : (1968) IILLJ135SC, was not on the point involved in the case before it. In that case the tenure of Dr. Bool Chand was curtailed as he was found unfit to continue as Vice Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. The judgment of the court in *Dr. D.C. L. Sexena v. State of Haryana* : (1987) IILLJ360SC was also held to be of no relevance to the facts of the case of Dr. Aggarwal before the court.

(17) In *M/s. Indian Rly. Construction Company Ltd. and others v. Lt Col. A. K. Dogra (Retd)* : (1993) IILLJ45Del the question was whether appellant could terminate the services of the respondent before his term of appointment expired without assigning any reason. It was in pursuance of an advertisement the respondent who was serving as Lt. Col. in the Indian Army, applied for the post of Chief Project Manager under the control of the appellant and this post of Chief Project Manager was offered to the respondent for a period of two years. The letter of appointment said that the appointment to the post was purely on contract basis and would be for a period of five years terminable any time without notice without assigning any reason therefor. However, before the completion of the full term the services to the respondent were terminated without assigning any reason. The court held that it was well settled that executive action must be informed by reason and must not be arbitrary as arbitrariness was opposed to the principle of equality enshrined in Article 14 of the Constitution. The court held where the appointment was the result of a contract between the parties and one of the parties was an instrumentality of the State, the tenure of an employee could not be cut short or brought to an end arbitrarily at the whims and caprice of the employer before the expiry of the period of his contract, and that there must exist adequate reason for bringing to an end the services of an employee before the contractual period expired. The court also dismissed an argument of the appellant that there were some complaints against the respondent and said that this argument was of no avail to the appellant as it was not disputed that no enquiry whatsoever was held against the respondent and that if the order terminating the services of the

respondent was founded on complaints and charges against him then in that event his services could not be dispensed with without affording a reasonable opportunity of hearing to him in regard thereto. The court, therefore, held that the services of the respondent were terminated illegally before the stipulated period came to an end.

(18) In *Dr. Bool Chand v. Chancellor, Kurukshetra University*, : (1968) IILLJ135SC, on which Mr. Sarin, learned counsel for the respondents, placed great reliance, the services of the Vice-Chancellor, Dr. Bool Chand, were terminated but only after show cause was issued to him as to why the tenure of his service should not be terminated. Dr. Bool Chand made a representation which was considered and it was only after that his tenure was determined because in view of the Chancellor it was not in public interest to retain Dr. Bool Chand as Vice-Chancellor, and he was also informed of the grounds of the proposed termination of the tenure of his office, and an order giving detailed reasons was passed by the Chancellor. In that case, after Dr. Bool Chand had been appointed as Vice-Chancellor of Kurukshetra University, his past conduct as the Collector, District Rajgarh in the State of Madhya Pradesh, came to light. The court said that in the very scheme of our educational set up at the University level, the post of Vice-Chancellor was of very great importance and if the Chancellor was of the view, after making due enquiry, that a person of the antecedents of Dr. Bool Chand was unfit to continue as Vice Chancellor, it would be impossible, unless the plea that the Chancellor acted maliciously or for a collateral purpose was made out, for the High Court to declare that order, terminating the office of the Vice-Chancellor, ineffective. The court also said that once the appointment was made in pursuance of a statute, though the appointing authority was not precluded from determining the employment, the decision of the appointing authority to terminate the appointment might be based only upon the result of an enquiry held in a manner consistent with the basic concept of justice and fairplay. Then the court observed as under :-

'THE power to appoint a Vice-Chancellor has its source in the University Act; investment of that power carries with it the power to determine the employment: but tile power is coupled with duty. The power may not be exercised arbitrarily; it can be only exercised for goods cause, i.e., in the interests of the University and

only when it is found after due enquiry held in manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor.'

(19) The decision of the Supreme Court in *Dr. D.C. Saxena v. State of Haryana and others*, Air 1987 S.C. 7463, is also of no help to respondents. In this case, tenure of Dr. D.C. Saxena, as Chairman of the Board of School constituted under Haryana Board of School Education Act, was terminated on account of certain policy decision by the State Government. Section 4A of this Act provided that the Chairman, Vice-Chairman and members of the Board shall hold office during the pleasure of State Government, and section 9 gave power to the State Government to remove any member of the Board, but before making such order the reasons for his proposed removal shall be communicated to him and he shall be given an opportunity of tendering an Explanation in writing which shall be duly considered by the State Government. It was contended that section 9 of the Act had been violated. The court said that it was apparent, on a comparison of the terms of section 4-A and section 9, that while section 4-A dealt with the general power of the State Government to terminate the tenure, section 9 carved out a special field dealing with a category of cases where the State Government might remove a member whose continuance in office was not in the interest of the Board. As a matter of fact, in this case there was no challenge to the constitutional validity of section 4-A. The court thus said that where the termination of the tenure of the Chairman of the Board was the result of the policy decision being taken by the State Government of dispensing with the services of non-officials and non-MLAs as Chairmen of the Boards and Corporations, it could not be said that the omission to follow the procedure laid down in section 9 rendered his removal bad.

(20) Tenure appointment is not akin to temporary appointment or ad-hoc appointment. In the case of tenure appointment a person is told that he is to hold office for a certain period and he has legitimate expectation to hold that post till the end of his tenure unless, of course, the tenure could be terminated in accordance with the law and procedure prescribed. We do not find the two decisions of the Supreme Court in *Triveni Shankar State of U.P. and : (1992)11LLJ23SC* , and *State of Uttar Pradesh & Anr. v. Kaushal Kishore Shukla, : [1991]1SCR29* , to be of any relevance in the present case, as in those cases the services of temporary

employees were terminated on the basis of certain adverse entries against them. It has been held that temporary Government servant has no right to hold the post and his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servant.

(21) In *KaMal KishoreLakshman v. Management of M/s.. Pan American World Airways Inc. and others*, : (1987)ILLJ107SC , the services of a workman were terminated on the plea of loss of confidence, and the court said that it cast stigma on the employee. The court said that loss of confidence by the employer in the employee was a feature which certainly affected the character or reputation of the employee, and, therefore, the allegation of loss of confidence amounted to a stigma.

(22) In *Union of India and others V. Hindustan Development Corpn. and ors.*, : AIR 1994 SC988 , the court considered the principle of legitimate expectation in depth. From Halsbury's Laws of England, Fourth Edition, Volume 1(1) 151 the court quoted a passage explaining the scope of legitimate expectation. It is as under :-

'A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.' The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority propose to defeat a person's legitimate expectation, it must afford him an opportunity to make representations on the matter.' The court also approved the following passage from a decision of the House of Lords in *Council of Civil Service Unions and others V. Minister for the Civil Service* (1984) 3 All ER 935:- Administrative action is subject to control by judicial review under three heads : (1) illegality, where the decision-making

authority has been guilty of an error of law, e.g., by purporting to exercise a power it does not possess: (2) irrationality, where the decision-making authority has acted so unreasonably that no reasonable authority would have made the decision: (3) procedural impropriety, where the decision-making authority has failed in its duty to act fairly. The court said that a claim based on the plea of legitimate expectation could be sustained and the decision resulting in denial of such expectation could be questioned provided the same was found to be unfair, unreasonable, arbitrary and violative of principles of natural justice. The court said that legitimate expectations might come in various forms and owed their existence to different kinds of circumstances and it was not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities, and that 'they shift and change so fast that the start of our list would be obsolete before we reached the middle.' The court noted that by and large they arose in cases of promotions which were in normal course expected, though not guaranteed by way of a statutory right. The court approved the following passage in Administrative Law, Sixth Edition by H.W.R. Wade :- ...These are revealing decisions. They show that the courts now expect government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules, about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine.'

(23) In the case before us, the Central Government acted on the reports of Janakiraman Committee and Dr. Rao Committee. Both these committees were appointed by the Reserve Bank of India and not by the Central Government. Dr. Rao Committee recorded adverse finding against the petitioner while functioning as General Manager of the Andhra Bank and on the basis of which the Reserve Bank of India recommended that the petitioner may not be continued as the Executive Director of the Bank of Maharashtra. The petitioner was not the only

person in the top management of the Andhra Bank. There were others also, and, as we have noted above, the irregularities in the security transactions occurred in the Fort Branch of the Andhra Bank at Bombay and under the charge of an Assistant General Manager. The officers who handled the security transactions in that branch of Andhra Bank at Bombay have been proceeded against and enquiries have been held though we were told that they have also been placed undersuspension. On the adverse findings so recorded by Rao Committee, the Central Government proceeded to terminate the services of the petitioner without putting that report to him for him to explain. We find that basic principles of natural justice have been violated to the prejudice of the petitioner. The petitioner had a legitimate expectation that before his tenure could be cut down he would be given opportunity to explain his conduct as General Manager of the Andhra Bank, and whether he in any way connected with any irregularity in the security transactions. It is not that there is anything against him when he functioned the Executive Director of the Bank of Maharashtra or his performance there was not up to the mark. It is difficult for us to comprehend as to how the respondents could act on the reports of Janakiraman and Dr. Rao when those were not appointed by the centered Government and no opportunity had been given to the petitioner to explain his conduct if there was anything adverse against him. Mr. Sarin said that the respondents had lost confidence in the petitioner and lie was not found suitable. and it was not found desirable as well that he should continue as the Executive Director of the Bank of Maharashtra. He said action under clause 8(1A) was correctly taken. We are unable to agree with his submissions. I his loss of confidence, undesirability and unsuitability arose because of the adverse report given by Dr. Rao and not otherwise. To us it appears, it is a removal of the petitioner and not mere termination simplicities as canvassed before us. For one thing clause 8(1a) would be vocative of Section 23 (if the Contract Act being against public policy as held by the Supreme court in Central Inland Water Transport Corporation L.td. and another v. Brojo Nath Gangoly and another AIR 1986 SC 157, Similar Clause has also been held to be unconstitutional in a number of cases which we have referred to above. Respondents said those cases were concerned with workmen or managerial staff of the bank and would not apply, to the case of the petitioner who was the Executive Director and one of the

members of the Board constituted under the Scheme. It is not possible to accept this contention as well. We have seen the Scheme as well as the terms of appointment of the petitioner. He is like any other employee of the Central Government, though it may be that he is in the top echelon of management. His position is also not akin to a Director in the Board of Directors of a company under the Companies Act, From the return itself, petitioner will appear to be like any other employee of the Bank of Maharashtra. Clause 8(IA) would, therefore, be hit by Articles 14 and 16 of the Constitution which guarantee equality before law and equality of opportunity in the matter of public employment.

(24) We, there fore, hold that order dated 9 July 1993, terminating the services of the services of the petitioner is illegal and void, and we would set aside, the same. The petitioner would be entitled to the post of Executive Director in the Bank of Maharashtra and would be entitled to all the benefits accrued to him on the date his services were terminated. The petitioner shall be entitled to Counsel fee Rs. 10,000.00 .

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