

S.L. Soni Vs. Rajasthan State Mineral Development Corporation Ltd.

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Court : Rajasthan

Decided On : Feb-26-1985

Reported in : 1985(1)WLN318

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Civil Writ Petition No. 2009 of 1982

Appellant : S.L. Soni

Respondent : Rajasthan State Mineral Development Corporation Ltd.

Disposition : Petition allowed

Judgement :

S.C. Agrawal, J.

1. In this writ petition, the petitioner S.L. Soni, is seeking to challenge the validity of the order (Ex. 5) dated 27th May, 1982 whereby the services of the petitioner were terminated.

2. The Rajasthan State Mineral Development Corporation Ltd. (here in after referred to as the 'Respondent Corporation') is a limited company incorporated in 1979 under the provisions of the Indian Companies Act, 1956. All the shares of the respondent Corporation are held by the government of Rajasthan and all the directors of the respondent Corporation including the Chairman, the Managing

Director and the Executive Director are either nominees of the Government of Rajasthan or those appointed by the respondent Corporation in the general meeting.

3. Prior to the incorporation of the respondent Corporation, there was a Corporation known as the Rajasthan State Industrial and Mineral Development Corporation Ltd. (in short RSIMDC). By an agreement between RSIMDC and the respondent Corporation the RSIMDC transferred its business and assets and liabilities relating to its mining activities as well as the ownership and management of the mines belonging to it to the respondent Corporation.

4. The petitioner was initially appointed as Accountant in the RSIMDC vide order dated 31st July, 1973. He was promoted as Sr. Accountant on ad hoc basis in the RSIMDC vide order dated 1st July, 1978. As a result of the transfer and ownership of the mining activities of the RSIMDC to the respondent Corporation, the petitioner having opted for the services of the respondent Corporation, came in the service of the respondent Corporation. On the basis of the recommendation of the Departmental Promotion Committee (DPC) the petitioner was promoted to the post of Sr. Accountant by order (Ex. 1) dated 16th April, 1980 with effect from the date of his ad hoc promotion to the post of Sr. Accountant. By the said order the petitioner was also confirmed with effect from the date of his transfer, i.e. 1st December, 1979. By order (Ex. 2) dated 29th September, 1980. the petitioner, on the recommendations of the DPC, was promoted to the post of Assistant Manager (Accounts). The aforesaid promotion of the petitioner on the post of Assistant Manager (Accounts) was on probation basis and was subject to his satisfactory completion of one year's probationary period. While the petitioner was working as Assistant Manager (Accounts), the impugned order (Ex. 5) dated 27th May, 1982 was passed whereby the services of the petitioner were terminated with effect from 27th May, 1982. Along with the said order, a Demand draft for Rs. 4.737.30, being three months salary in lieu of requisite notice, was also enclosed. Feeling aggrieved by the aforesaid order terminating his services, the petitioner has filed this writ petition.

5. In the writ petition the petitioner has submitted that the petitioner was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and that the respondent Corporation is an industry within the meaning of Section 2(j) of the Act and that the services of the petitioner were terminated in contravention of the provisions of Section 25F of the Act in as much as the said termination of the services of the petitioner constitutes retrenchment and it was incumbent upon the respondent Corporation to have paid retrenchment compensation to the petitioner at the time of termination of his service and the same was not done. In the writ petition, the case of the petitioner is further that the respondent Corporation is 'State' as the said expression is defined in Article 12 of the Constitution of India & that the impugned order of termination of the services of the petitioner has been passed in violation of the provisions of Articles 14 and 16 of the Constitution of India. In this connection it has been submitted that other persons who were appointed along with the petitioner as Assistant Manager (Accounts) and are junior to the petitioner are continuing in service while the petitioner has been picked out for discriminatory treatment. It has also been submitted that the impugned order of termination is not an order of termination simpliciter but is, in substance, an order terminating the services of the petitioner by way of punishment for the conduct of the petitioner in relation to an incident involving the employees of the respondent Corporation in connection with the holding of a condolence meeting on the death of three employees of the respondent Corporation in an accident. The case of the petitioner is that the aforesaid incident constitutes the foundation for the passing of the impugned order terminating the services of the petitioner and that no charge-sheet was served upon the petitioner and he was not afforded any opportunity to offer his explanation with regard to the same.

6. The writ petition has been contested by respondent. In reply that has been filed on behalf of the respondent Corporation it has been asserted that the respondent Corporation being a company registered under the Companies Act, is not an instrumentality of the Government of Rajasthan and is not amenable to the writ jurisdiction under Article 226 of the Constitution. In the said reply it has also been stated that the relationship of the petitioner and the respondent Corporation is that of master and servant and it is governed by the terms of appointment/contract and

since the matter arose out of contract, the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution and the only remedy that was available to him is to file a civil suit for breach of contract. In the reply it has been decided that the petitioner was a workman under Section 2(s) of the Act and it has been asserted that the petitioner was posted as Asstt. Manager (Accounts) in the Marketing division and was performing managerial, supervisory and administrative functions and he was supposed to have supervised the work of his sub-ordinates. In the said reply it has also been stated that the impugned order terminating the services of the petitioner was passed as per conditions of the petitioner's appointment order and that there is no requirement in the conditions in the appointment order for enquiry etc. before termination of service. In the said reply the assumption of certain facts by the petitioner being foundation for the termination of his services has been denied. It is also stated in the reply that the provisions 'of Articles 14 and 16 of the Constitution axe not applicable to the facts of the case.

7. The petitioner has filed a rejoinder to the aforesaid reply filed on behalf of the respondent Corporation. In the said rejoinder he has reiterated that the respondent Corporation is State under Article 12 of the Constitution since it is an agency or instrumentality of the Government of Rajasthan being under the financial as well as the administrative control of the Government, In the said rejoinder it has been stated that in the provisional seniority list of Accountants as on 31st August, 1978 and in the provisional seniority list of Sr. Accountants as on 31st July, 1980, the petitioner has been shown senior to Shri B.L. Shrama who was also promoted as Asstt. Manager (Accounts) along with the petitioner vide order (Ex. 2) dated 29th March, 1980 and that Shri B.L. Shrama has been allowed to continue while the services of the petitioner have been terminated.

8. After the said rejoinder had been filed a supplementary affidavit of L.N. Bhattacharjee was filed on behalf of the respondent Corporation, In para 4 of the said supplementary affidavit it has been stated that the termination of the services of the petitioner is well founded and justified on the facts as set out in sub-paras (a) to (g) of para 4. In the aforesaid sub-paragraphs (a) to (g) of para 4, it has been stated that on 13th May, 1982 there was a sad accident in which the jeep of the

respondent Corporation was involved and three employees of the respondent Corporation had died. The funeral of the deceased employees was held on 14th May, 1982 and at that time it was also decided that a condolence meeting would be held in the head office on 15th May, 1982 at 12.30 noon, and thereafter holiday would be declared. At that time a difference of opinion arose between the petitioner and one Shri M.R. Gujar, Section Incharge, Materials division, on the question as to whether a condolence meeting should have been held on 14th or 15th May, 1982 and the petitioner and Shri. M.R. Gujar created a scene by hurling abuses and unparliamentary words and objectionable remarks and that they also made undesirable remarks about the Secretary and Financial Adviser of the respondent Corporation and that when Shri Saini, P.A. to the Financial Adviser made an attempt to pacify the petitioner, the petitioner shouted and tried to manhandle Shri Saini. In the aforesaid affidavit it is stated that the respondent Corporation had acted bonafide in terminating the services of the petitioner taking an over all view of the facts and circumstances mentioned in para 4 of the affidavit in the larger interest of the respondent Corporation. In the said affidavit it is also stated that the order of termination is an order of discharge simpliciter and even if it be assumed that the termination of the petitioner was in the nature of punitive action against him, it was not incumbent upon the respondent Corporation to initiate any disciplinary proceedings before taking any action in as much as there is no requirement in the Rules, circulars or terms and conditions applicable to the petitioner for holding disciplinary proceedings & that the respondent Corporation was entitled to terminate the services of the petitioner by giving the prescribed notice or by paying the salary in lieu thereof. The petitioner has filed a reply to the aforesaid supplementary affidavit wherein he has disputed the correctness of the averments contained in para 4 of the supplementary affidavit.

9. The first contention that was urged by Shri G.S. Singhvi, the learned Counsel for the petitioner was that the petitioner was a workman within the meaning of Section 2(s) of the Act and he was entitled to the protection of Section 25F of the Act since the order terminating the services of the petitioner constitutes retrenchment under Section 2(oo) of the said Act and as the petitioner was not paid retrenchment compensation at the time of the passing of the order of termination, the said order terminating the services of the petitioner was passed in

contravention of the provisions of Section 25F of the Act and is, therefore, void. In support of his aforesaid contention Shri Singhvi has referred to the office order (Ex. 4) dated 30th September, 1980 which defines the duties that were being discharged by the petitioner as Assistant Manager (Accounts) as the time of the passing of the impugned order and has submitted that one of the aforesaid duties which are mentioned in the said order, can be regarded as managerial or supervisory in nature.

10. Shri Rangrajan, the learned Counsel for the respondent Corporation has on the other hand disputed that the petitioner was a workman under Section 2(s) of the Act. The submission of Shri Rangrajan was that the petitioner while functioning as Assistant Manager (Accounts), was discharging managerial and supervisory functions. Shri Rangrajan has also submitted that since there is a dispute on the question as to whether the petitioner was a workman under Section 2(s) or not and the said dispute involves determination of questions of fact relating to the nature of duties performed by the petitioner, the said question cannot be agitated before this Court under Article 226 of the Constitution and the proper remedy for the petitioner is to seek a reference under Section 10 of the Industrial Disputes Act. In my view aforesaid contention urged by Shri Rangrajan must be accepted. In the present case there is a dispute between the parties as to whether the petitioner was a workman under Section 2(s) of the Act at the time of the passing of the impugned order terminating his services. The said question involves determination of facts with regard to the nature of the duties that were being discharged by the petitioner while functioning as Assistant Manager (Accounts). Such a determination can only be made on the basis of evidence. The said question cannot be properly adjudicated in these proceedings under Article 226 of the Constitution and the appropriate remedy that was available for the petitioner was to raise an industrial dispute and have it referred for adjudication under Section 10 of the Act. The first contention urged by Shri Singhvi cannot, therefore, be accepted.

11. Shri Singhvi next contended that the impugned order terminating the services of the petitioner has been passed in violation of the right to equality guaranteed under Articles 14 and 16 of the Constitution. In this connection the submission of Shri Singhvi is two-fold. In the first place Shri Singhvi has submitted that the

impugned order is not an order of discharge simpliciter but is punitive in nature passed on the basis of the conduct of the petitioner at the condolence meeting held on 15th May, 1982 and since it was passed in violation of the natural justice without affording an opportunity to the petitioner of making his submissions, it is violative of the provisions of Articles 14 and 16 of the Constitution. The other limb of the submission of Shri Singhvi in this regard was that in case it is held that the impugned order of termination is an order of discharge simpliciter and is not punitive in nature then the said order suffers from the vice of arbitrariness in as much as Shri B.L. Sharma who was junior to the petitioner in the cadre of Accountants, Sr. Accountant as well as the Asstt. Manager (Accounts), has been allowed to continue in service as Assistant Manager (Accounts.) while the services of the petitioner have been terminated.

12. Shri Rangrajan, has fairly conceded that in view of the recent decisions of the Supreme Court, the respondent Corporation has to be regarded as State under Article 12 of the Constitution and the respondent Corporation is subject to the limitations placed on the powers of State by Articles 14 and 16 of the Constitution. Shri Rangrajan has, however, submitted that in the present case Articles 14 & 16 cannot be invoked by the petitioner. In this regard the submission of Shri Rangrajan was that a distinction must be drawn between a statutory Corporation constituted and established by a statute and a company registered under the Indian Companies Act and that while the Regulations framed by a statutory Corporation in exercise of the statutory powers conferred on it have the force of law and the said regulations can be legally enforced under Article 226 of the Constitution, the rules framed by a Company registered under the Companies Act do not have statutory force and the said rules cannot be enforced under Article 226 of the Constitution. Shri Rangrajan has urged that in so far as a company registered under the Companies Act is concerned, even if it happens to be a fully owned Government company, the relationship of the company with its employees is purely contractual in nature and if such a company terminates the service of its employee in violation of the terms of the contract, the only remedy that is available to the employee is to seek the enforcement of his rights under the contract by filing a civil suit and he cannot invoke the jurisdiction of this Court under Article 226 of the Constitution. In this connection Shri Rangrajan has also submitted that in

cases where the relationship is that of master and servant governed by the contract, the principles of natural justice have no application and, therefore, even if the action of the management of the respondent Corporation is held to be punitive in nature, it is not open to challenge on the ground of violation of the principles of natural justice. In support of his aforesaid submission, Shri Rangrajan has placed reliance on the decision of a division bench of the Delhi High Court in *Ved Prakash Malhotra v. State Bank of India and Anr.* .

13. I have carefully considered the aforesaid submission of Shri Rangrajan and I find myself unable to accept the same. The recent decisions in the field of administrative law make a distinction between an ordinary relationship of master and servant and a relationship which involves an element of public employment. In cases where element of public employment is involved, it has been held that the principles of natural justice would be applicable and if the services of an employee are sought to be terminated by way of punitive action on account of misconduct, he must be afforded an opportunity before such an action is taken. The decision also show that the scope of public employment is not confined to employment on government post only and the concept of public employment covers employment with statutory Corporations constituted under a statute as well as government companies registered under the provisions of the Companies Act and all such employments are treated at par and on the same level.

14. In this connection reference may be made to the following observations of Lord Wilberforce in *Malloch v. Aberdeen Corporation* (1971)1 WLR 1578:

A comparative list of situations in which persons have been held entitled to a hearing, or to observation of rules of natural justice, according to the master and servant test, looks illegal and even bizzare, A specialist surgeon is denied protection which is given to a hospital doctor: a University professor as a servant has been denied the right to be heard, a dock labourer and an undergraduate has been granted it; examples can be multiplied. One may accept that if there are relationships in which all requirements of the observance of rules of natural justice are excluded (and I do not wish to assume that this is inevitably so), these must be confined to what have been called 'pure master and servant cases', which I take to

mean cases in which there is no element public employment or service, no support by statute, nothing in the nature of an office or a statutes which is capable of protection. If any of these elements exist then, in my opinion, whatever the terminology used, and even though in some inter parties aspects the relationship may be called that of means and servant, there may be essential procedural requirements to be observed and failure to observe them may result in a dismissal being declared to be void.

15. The aforesaid observations have been quoted with approval by Mathew, J. in his concurring judgment in Sukdev Singh and Ors. v. Bhagat Ram Sardar Singh Raghuvanshi and Anr. : (1975)ILLJ399SC . In the said case the learned Judge has held that employment under Public Corporations established by statutes is public employment and the employees of such corporations are entitled to the protection which appertains to public employment. In making the aforesaid observations, the learned Judge has proceeded on the assumption that the regulations made by the statutory Corporations have no force of law and has held that since the employment under the Corporations is public employment, an employee would get a status which would enable him to be declared in continuous service if he was dismissed or discharged contrary to the regulations.

16. In the Manager Government Branch Press & anr. v. D.B. Belliappa : (1979)ILLJ156SC , the Supreme Court rejected the contention urged on behalf of the State that the conditions of service of a temporary employee were governed by the contract of service voluntarily entered by him and that if under the said terms of employment the service was liable to termination at the will and pleasure of the appointing authority without reason and without notice, the employee could not complain against the impugned action taken in accordance with those mutually agreed terms. The Supreme Court rejected the said contention as wholly misconceived and observed:

It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time.

'This rule held the field at the time when the master and servant were taken more literally than they are now and when as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his pater families'. The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th Century and the first half of the 20th century, which nationalised the employer's absolute right to discharge the employee. 'Such a philosophy', as pointed out by K.K. Mathew, J. (vide his treatise: 'Democracy, Equality and Freedom', page 326), 'of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers'. To bring it in tune with vastly changed and changing socio-economic conditions and more so of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the Constitutional protection of Articles 14, 15, 16 and 311 is available.

17. In the *Managing Director, U.P. Warehousing Corporation and Ors. v. Vijay Narayan Vajpayee* : (1980)ILLJ222SC , Chinnappa Reddy, J. in his concurring judgment, has considered the question as to whether a distinction could be made between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a corporation set up under a statute or incorporated but wholly owned by the government and has held that there was no distinction between the aforesaid two classes of employees. In this connection the learned Judge has observed:

I find it very hard indeed to discover any distinction on principle, between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a Corporation, set up under a statute or incorporated but wholly owned by the Government. It is self evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure 'social economic and political justice', to preserve 'liberty of thought, expression, belief, faith and worship', and to ensure 'equality of status and of opportunity'. That is the

proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense Government activity in manifold ways. Legislative and executive activity have reached very far and have touched very many aspects of a citizen's life. The Government, directly or through the Corporations, set up by it or owned by it, now owns or manages, a large number of industries and institutions. It is the biggest builder in the country. Mammoth and minor irrigation projects, heavy and light engineering projects, projects of various kinds are undertaken by the Government. The Government is also the biggest trader in the country. The State and the multitudinous agencies and Corporations set up by it are the principal purchasers of the produce & the products of our country and they control a vast and complex machinery of distribution. The Government, its agencies and instrumentalities, Corporations set up by the Government under statutes and Corporation incorporated under the Companies Act but owned by the Government have thus become the biggest employers in the country. There is no good reason why, if Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employees, the Corporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a, country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confine the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a Court to enforce a contract of employment and denies him the protection of Articles 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In growing realisation of the importance of employment in the public sector, the Parliament and the Legislatures of the States have declared persons in the services of local authorities Government Companies and statutory Corporations as

public servants and, extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants.

18. The aforesaid observations of Chinnappa Reddy, J. have been quoted with approval in the recent judgment of the Supreme Court in *A.L. Kolra v. The Project and Equipment Corporation of India Ltd.* : (1984)ILLJ186SC . In that case the Supreme Court was dealing with the Project and Equipment Corporation of India Ltd., which was wholly owned subsidiary company of the State Trading Corporation, a Government of India Undertaking and was incorporated under the provisions of the Companies Act. After setting out the aforesaid observations the Supreme Court held that even though the employees of the said Corporation were not governed by Part XIV of the Constitution and Article 311 did not in terms apply to them, but it could not be said that the protection that was conferred on such employees by Part III of the Constitution was comparatively less effective than the one conferred by Part XIV and that the distinction sought to be drawn between protection with Part XIV of the Constitution and Part III, has no significance. '

19. In view of the aforesaid decisions, it must be concluded that although the provisions of Article 311 are not applicable to employees of the respondent Corporation but the protection that is available to such employees under Part III of the Constitution is not less effective and since the employees of the respondent Corporation which constitutes 'State' for the purpose of Article 12 of the Constitution, fall within the ambit of public employment, the said employees are entitled to invoke the same standards as are applied by the Government while dealing with its employees under Article 311 of the Constitution. The distinction drawn by Shri Rangrajan between the employees of the State whom Article 311 is applicable and employees of public Corporations and companies owned by the Government to whom Article 311 is not applicable, is thus of little significance. Nor is the distinction made by Shri Rangrajan between employees of a Corporation established by statute and employees of a company incorporated under the Companies Act owned by the Government is of any material significance. In view of the decisions referred to above, all the employees whether of State or of public

Corporations established under statute and employees of companies incorporated under the Companies Act & owned or controlled by the Government, stand at the same level since element of public employment is present in all such employments.

20. As regards the applicability of the principles of natural justice, it may be mentioned that in the regulations framed by the various Corporations provision is made for affording reasonable opportunity to the employee before any punitive action is taken against him for misconduct. But even in the absence of such a provision in the regulations, the principles of natural justice would be attracted. In this connection reference may be made to the following observations from the judgment of Supreme Court in *Managing Director U.P. Warehousing Corporation and Ors. v. Vijay Narayan Vajpayee* (supra):

Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and the statutory body, the employer could not terminate the services of its employees without due enquiry in accordance with the statutory Regulations, if any, in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character.

21. In view of the aforesaid decision, the fact that the respondent Corporation had not framed any rules or regulations with regard to the disciplinary action against its employees for misconduct, would not mean that it was open for the respondent Corporation to take punitive action against its employees for misconduct without following the principles of natural justice and even in the absence of such a regulation, it is incumbent upon the respondent Corporation to follow the principles of natural justice before taking any punitive action against its employees and in case the punitive action is taken against an employee without following the principles of natural justice the said action of the respondent Corporation would be open to challenge on a ground that it was passed in violation of principles of natural justice.

22. In the present case, the case of the petitioner is that the impugned order was punitive in character since it was founded on the conduct of the petitioner in connection with the incident which took place at the condolence meeting held on May 15, 1982 to mourn the death of three employees of the respondent Corporation. Although it is the case of the respondent Corporation that the impugned order was an order of discharge simpliciter but in the supplementary affidavit of Shri L.N. Bhattacharjee filed on behalf of the respondent Corporation, the action has been justified on the basis of the facts set out in sub-paras (a) to (g) of para 4 of the said affidavit and it has been stated that in terminating the services of the petitioner, the respondent Corporation had taken an over all view of the facts and circumstances mentioned in para 4 of the said affidavit. A perusal of sub-paras (a) to (g) of para 4 of the supplementary affidavit of Shri Bhattacharjee shows that on 13th May, 1982 an accident involving the jeep of the respondent Corporation has taken place and three employees of the respondent Corporation had died in the said accident. Funeral of the deceased employees took place on 14th May, 1982 and a condolence meeting was held in the head office of the respondent Corporation on 15th May, 1982. A difference of opinion arose against the employees on the question as to whether the condolence meeting should have been held on 14th or 15th May, 1982 and during the condolence meeting, the petitioner and Shri M.R. Gujar created a scene by hurling abuses and unparliamentary words and objectionable remarks and they also made undesirable remarks about Secretary and Financial Adviser of the respondent Corporation and an effort was made by Shri Saini, PA to Financial Adviser to pacify the petitioner but the petitioner should and tried to manhandle Shri Saini. The petitioner in his reply to the supplementary affidavit has denied that he had hurled abuses or had used unparliamentary language or had made objectionable or undesirable remarks against any body or had shouted or tried to manhandle Shri Saini, P.A. to the Financial Adviser. But from the averments contained in the supplementary affidavit of Shri Bhattacharjee it does appear that the conduct of the petitioner at the condolence meeting held on May 15, 1982, as referred to in para 4 of his affidavit, was taken into consideration by the respondent Corporation in passing the impugned order terminating the services of the petitioner. It is not the case of the respondent Corporation that apart from the aforesaid incident, there was any thing

else in the service record of the petitioner which rendered him unfit for continuance in the service of the respondent Corporation. In the circumstances the only inference that can be drawn is that the impugned order terminating the services of the petitioner was founded on the conduct of the petitioner at the condolence meeting held on 15th May, 1982 as mentioned in para 4 of the supplementary affidavit of Shri L.N. Bhattacharjee. In the circumstances the impugned order terminating the services of the petitioner cannot be held to be an order of discharge simpliciter, but it must be held to be an order which was punitive in character. There is no dispute that no opportunity was afforded to the petitioner to explain his conduct before passing of the impugned order and the impugned order was passed in violation of the principles of natural justice. The impugned order terminating the services of the petitioner cannot, therefore, be upheld.

23. Even if it be assumed that the impugned order of terminating the services of the petitioner was not punitive in nature, but was an order of discharge simpliciter, the said order suffers from the vice or arbitrariness in as much as petitioner has been singled out for discriminatory treatment. In this connection it may be stated that the case of the petitioner is that Shri B.L. Sharma was junior to him in the cadre of Accountants as well as Senior Accountant and the said Shri B.L. Sharma was promoted as Assistant Manager (Accounts), along with the petitioner by order (Ex. 2) dated 29th September, 1980. The said Shri B.L. Sharma, even though junior to the petitioner, has been allowed to continue, but the services of the petitioner have been terminated. The case of the petitioner is that the service record of the petitioner is in no way inferior to that of Shri B.L. Sharma. The respondent Corporation has not disputed the aforesaid facts. This would show that a person junior to the petitioner has been allowed to continue on the post of Assistant Manager (Accounts) while the petitioner has been asked to go. Since a person, namely, Shri B.L.Sharma, junior to the petitioner has been allowed to continue, it must be held that the petitioner has been arbitrarily picked out for discriminatory treatment and the impugned order terminating the services of the petitioner has been passed in violation of the provisions of Articles 14 & 16 of the Constitution of India,

24. The writ petition, therefore, succeeds and is hereby allowed. The order (Ex. 5) Sated 27th May, 1982 with regard to the termination of the services of the petitioner, is set aside and it is declared that the petitioner continues to remain in the service of the respondent Corporation. The petitioner will be entitled to his costs. The cost are assessed at Rs. 500/- (five hundred only).

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