Delhi High Court Delhi Transport Corporation vs Daya Nand And Ors., Delhi ... on 7 May, 2002 Equivalent citations: 99 (2002) DLT 188, 2002 (64) DRJ 202, (2002) IIILLJ 728 Del, 2003 (2) SLJ 78 Delhi Author: S Sinha Bench: S Sinha, A Sikri JUDGMENT S.B. Sinha, C.J. 1. Validity of a Regulation 14(10)(c) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations 1952 (hereinafter referred to as, 'the said Regulations') is in question in these Letters Patent Appeals, which arise out of a judgment and order passed by a learned Single Judge of this Court in various writ petitions. 2. Having regard to the fact that a pure question of law has arisen for consideration in these appeals, it may not be necessary to consider the fact of the matter at length. 3. Suffice it to point out that the services of the writ petitioners - respondents herein had been terminated purported to be relying on or on the basis of the aforementioned provision. 4. The learned Single Judge principally having regard to the decision of the Apex Court in Delhi Transport Corporation v. DTC Mazdoor Congress and Ors. held that as prior to orders terminating services of the writ petitioners, no opportunity of hearing had been afforded, the same are liable to be set aside. 5. Mr. Vinay Sabharwal, the learned counsel appearing on behalf of the petitioner would contend that the learned Single Judge erred in passing the impugned judgment inasmuch as similar provisions have been held to be intra vires. 6. According to the learned counsel, the only legal requirement therefore is that prior to taking recourse to such a provision, service of a notice by way of advance warning should be served. 7. Reasons for such termination of service, if recorded, the learned counsel would contend, would sub-serve the principles of natural justice. 8. Strong reliance in this connection has been placed on Aligarh Muslim University and Others. v. Mansoor Ali Khan, ; Punjab & Sind Bank and Others v. Sakattar Singh, (2001) 1 SCC 214; Hindustan Paper Corporation v. Purnendu Chakrobarty and Others, ; Hari Pada Kahn v. Union of India and Others, ; J.K. Cotton Spinning and Weaving Mills Company Ltd. v. State of U.P. and Others, ; and Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, 1980 (1) L.L.J. 137. 9. Mr. Sabharwal would submit that even assuming that an order of termination by the Management relying on or on the basis of Regulation 14(10)(c) of the said Regulations would amount to termination on the ground of 'commission of misconduct' =, the same would ipso facto cannot be held to be vitiated in law inasmuch as having regard to the fact that the Regulation relates to the 'workmen' within the meaning of Section 2(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as, 'the I.D. Act'), and, thus, such a question, in the event, industrial dispute is raised, the Management would have an opportunity to prove the charges of misconduct before the Industrial Tribunal or the Labour Courts, as the case may be in terms of the provisions contained in Section 11A thereof. Reference in this connection has been made to The Workmen of Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management and Ors., 10. As by reason of the impugned provision, the learned counsel would urge, a legal fiction has been created in terms whereof the concerned workman would be deemed to have resigned, the question of drawing an inference from the surrounding circumstances as to whether the workman intended to resign or abandon his

employment would not arise. In a case of this nature, the termination of services being a simplictor one, no stigma is attached and thus an opportunity of hearing would be wholly unnecessary. 11. Mr. Sabharwal would submit that reliance placed by the learned Single Judge on DTC Mazdoor Congress's case (Supra) was misplaced inasmuch as therein (i) the provision of Regulation 9(b) was totally different; and (ii) in terms thereof, no reason was required to be assigned; but in this case, as reasons are required to be assigned, the charges of misconduct can, even in absence of any disciplinary enquiry having been held, be proved before the Tribunal. 12. The learned counsel appearing on behalf of the respondents, on the other hand, would contend that if an employer is conferred with two different powers in respect of a similar matter, it could take recourse to pick and choose method, and, thus, it must be held to have been conferred with an arbitrary power and must be held to be discriminatory in nature. 13. Termination of employment, the learned counsel would contend, must conform to the provisions of Regulation 15 of the Regulations, which is akin to the provisions contained in Clause 2 and Article 311 of the Constitution of India (in short, 'the Constitution') and in the event, an order of termination of service is passed, the principles of natural justice must be complied with. Reliance in this connection has been placed on Jai Shanker v. State of Rajasthan, ; Deokinandan Prasad v. The State of Bihar and Ors., ; and Syndicate Bank v. General Secretary, Syndicate Bank Staff Association and Another., 14. It was argued that such a termination of service caused without the consent of workman would come within the purview of the expression 'retrenchment' as contained in Section 2(oo) of the Industrial Disputes Act. Reliance in this connection has been placed on Uptron India Ltd. v. Shammi Bhan and Another, 15. The Parliament enacted the Delhi Road Transport Authority Act in the year 1950. Section 53 of the Said confers a regulation-making power upon Delhi Transport Corporation. 16. The Delhi Transport Corporation with previous sanction of the Central Government in exercise of its power conferred upon it under Section 53(1) read with Section 53(2)(c) of the said Act made Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952. 17. Regulation 2(b) of the Regulations defines Employee other than a casual or a temporary employee, who holds a permanent post. 18. Regulation 3 of the Regulations provides of 'duties of the employees'. 19. Regulation 14 of the Regulations deals with various kinds of holidays and leaves. The nature of 'leave' available to an employee includes (i) casual leave; (ii) earned leave; (iii) sick leave; (iv) injury leave; (v) maternity leave; (vi) extra-ordinary leave without pay; and (vii) study leave. 20. Regulation 14(10)(b) of the Regulations, which is relevant for the purpose of this case, reads thus :- "The duration of extraordinary leave shall not ordinarily exceed three months on any one occasion. In exceptional cases it may be extended to eighteen months subject to such conditions as the Authority may by general or special orders prescribe only when the employee concerned is undergoing treatment for :- (i) pulmonary tuberculosis in a recognized sanatorium or (ii) tuberculosis of any other part of the body by a qualified tuberculosis specialist, or (iii) leprosy in a recognized leprosy institution or a specialist in leprosy recognized as such by the State Administrative Medical Of-

ficer concerned. Note 1 :- The concession of extraordinary leave up to eighteen months will be admissible also to an employee, who for want of accommodation in any recognized sanatorium at or near the place his duty received treatment at his residence under a tuberculosis specialist recognized as such by the State Administrative Medical Officer concerned and produces a certificate signed by that specialist to the effect that he is under his treatment and that he had reasonable chances of recovery on the expiry of the lave recommended. Note 2:- The concession of extraordinary leave up to eighteen months under this clause will be admissible only to those employees who have been in continuous service of the Authority for a period exceeding one year." 21. Before proceeding to deal with the rival contentions, as noticed hereinbefore, Regulation 9, which was the subject matter in DTC Mazdoor Congress's case (Supra) may be noticed. "Regulation 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) Where 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 wished 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." 22. The amended Regulation, which is impugned in these proceeding read thus :- "14(10)(c) Where an employee fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where such an employee, who is granted a lesser amount of extraordinary leave than the maximum amount admissible, remains absent from duty for any period which together with the extraordinary leave granted exceeds the limit up to which he could have been granted such leave under Clause (b), he shall be deemed to have resigned his appointment and shall accordingly cease to be in the employment of the Authority." 23. It is not in dispute that in terms of the Regulations, the appellant would be entitled to take recourse to either Regulation 14(10)(c) or Regulation 14(10)(b) of the Regulations, as it may deem fit and proper. 24. It may be true that by reason of the aforementioned Regulation 14(10)(c) of the Regulations, a legal fiction has been created, but the question, which would arise for consideration is as to whether creation of such legal fiction is permissible in law. 25. An employee working under a statutory authority, which is a 'State' within the meaning of Article 12 of the Constitution, is entitled to constitutional protection guaranteed to him under Part III of the Constitution. 26. An employee, subject to any contrary statutory or constitutional provision, is entitled to continue in employment, having regard to the extended meaning of 'life' as enshrined under Article 21 of the Constitution in various decisions of the Apex Court. 27. A person, in

the event the legal fiction created under Regulation 14(10)(c) of the Regulations is given its full effect, would be deemed to have resigned as a result whereof there would be complete cessation of the relationship of master and servant between the appellant and its employees, wherefor no legal formalities are required to be complied with. 28. In a given case, the said provision may wrongly be applied, as in an appropriate case it may be possible for the employee to show that he could not attend to his duties for reasons beyond his control. 29. Before the provision of Regulation 14(10)(c) of the Regulations is taken recourse to by the authority, the employee will have no say and in the event, the Management intends to take recourse to the said provision, he would merely be communicated with the ultimate order. Such a provision, therefore, does not meet with the requirements of Article 14 of the Constitution of India. 30. The reasons, which are required to be recorded therefore as was emphatically contended by Mr. Sabharwal, would be to repeat the wording of the statutory provisions, which would be only an empty formality. 31. It is, therefore, not a case where even in the mater of application of the said provision the employer has any discretionary role to play. The said provision does not stipulate that prior to taking recourse thereto, an opportunity of hearing should be granted. 32. The said provision does not contain any safeguard of being given a prior warning to the effect that in the event he fails and/or neglects to report to duty by the date fixed, his services would be terminated. 33. It has not been and could not be contended by the appellant herein that by taking recourse to the said provision, civil or evil consequences do not ensue. 34. It is a trite law that whenever civil or evil consequences are ensued by reasons of an administrative order, the principles of natural justice are required to be complied with. 35. Assignment of reasons alone in effect and substance are no substitute for hearing. Furthermore repeating the words of a section of law cannot be said to be assignment of reasons. 36. We, thus, cannot subscribe to the views of Mr. Sabharwal to the effect that assigning of reason per se would sub-serve the principles of natural justice. 37. Principles of natural justice as is well known are based on two pillars- (i) Right to be heard; (ii) No body shall be a judge of his own cause. 38. Assignment of reason is merely an extended principle of natural justice devised by the judicial pronouncements. It is not a basic pillar of the principles of natural justice. 39. Submission of Mr. Sabharwal that even in a case of this nature, the principles of natural justice can be complied with before the Industrial Courts in the event an industrial dispute is raised having regard to the provisions of Section 11A of the I.D. Act, to say the least, is fallacious. 40. On his own showing the act on the part of the employee may or may not be contumacious. There may or may not be any ill motive behind such act. It is not a misconduct wherefor the rules governing initiation of disciplinary proceedings are required to be complied with. 41. Section 11A of the I.D. Act would be attracted only in a case where an employee is dismissed from services on the charges of 'misconduct. The said provision furthermore can be taken recourse to in exceptional circumstances. 42. The law as regards application of Section 11A of the I.D. Act is that if an application is filed at the earliest opportunity by the employer to that effect that inter alia the issue as to whether the order of dismissal has been passed in

violation of the principles of natural justice or by a person, who had no jurisdiction therefore be tried as a preliminary issue and in the event such preliminary issue is determined against the employer, it be given an opportunity to adduce independent evidence before the Industrial Tribunal or the Labour Court, as the case may be. In a case where according to the employer itself the employee has resigned from his services, it is inconceivable that in an industrial adjudication, it would be permitted to make a volte-face and would be permitted to urge that the employee mis-conducted himself. 43. In this case, this Court is concerned, firstly as regard constitutionality of the said provision and consequently its effect thereof. The employer on his own showing by taking recourse to the impugned provision does not seek to put any stigma upon the employee. 44. According to the appellant, the effect of the said provision is automatic and merely what is required to be done -is to convey the consequences thereof to the concerned employee. 45. For the purpose of upholding the validity of a statute, the purport and object of the impugned provision cannot be rewritten at the instance of the employer so as to make "deemed resignation" to an act of termination on the ground of 'commission of misconduct' nor such a provision can be held to be constitutional by interpreting the same in the light of procedural safeguards granted to an employer under another statute, viz. Industrial Disputes Act. 46. Keeping in view the aforementioned backdrop, the question posed in the writ petitions may now be considered. 47. How an in what manner a discrimination against the employees similarly situated can be caused has been considered in DTC Mazdoor Congress's case (Supra) in the following words:- "142. ... Rule 9(i) is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him Rule 9(i). It can pick up another employee and apply to him Rule 9(ii). It can pick up yet another employee and apply to him Rule 36(iv)(b) read with Rule 38, and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a regular disciplinary inquiry into the alleged misconduct of the employee." It was further held:- "150. Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9(b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14 of the Constitution. It has also been held consistently by this Court that the Government carries on various trades and business activity through the instrumentality of the State such as Government Company or Public Corporations. Such Government Company or Public Corporations being State instrumentalities are State within the meaning of Article 12 of the Constitution and as such they are subject to the observance of fundamental rights embodied in Part III as well as to conform to the Directive Principles in Part IV of the Constitution. In other words the Service Regulations or Rules framed by them are to be tested by the touch-

stone of Article 14 of Constitution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), therefore, confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised. it is now well settled that the 'audi alteram partem' rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regulation 9(b) does not expressly exclude the application of the 'audi alteram partem' rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month's notice under Regulation 9(b) or pay in lieu thereof without recording any reason in the order and without giving any allegation on the basis of which the purported order is made. It was further observed :-"163. In order to apply the test contained in Article 14 and 19 of the Constitution we have to consider the objects for which the exercise of inherent rights recognized by Article 21 of the Constitution are restricted as well as the procedure by which these restrictions are sought to be imposed by both substantive and procedural laws and actions taken under them will have to pass the test imposed by Article 14 and 19 whenever facts justifying the invocation of either of these articles may be disclosed. Violation of both Articles 21 and 19(1)(g) may be put forward making it necessary for the authorities concerned to justify the restriction imposed by showing satisfaction of tests of validity contemplated by each of these two articles." P.B. Sawant, J. and L.M. Sharma, J. (as the learned Chief Justice of India then was) also did not uphold the vires of the Regulations as they found inherent lack of adequate and appropriate guidelines contained therein. K. Ramaswamy, J. also agreed with the view of B.C. Ray, J. Sabyasachi Mukharji, J. (as the learned C.J. then was) in his minority judgment, however, held that the provisions can be read down. 48. The question came up for consideration again before the Apex Court in D.K. Yadav v. JMA Industries Ltd., wherein it was held:- "11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to

answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both." "12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defense. Article 14 had a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and procedure prescribed by law must be just, fair and reasonable." 49. In Jai Shanker's case (Supra), the Apex Court has clearly held that termination of service on the ground of misconduct must be brought about in tune with the principles adumbrated in Clause 2 and Article 311 of the Constitution saying:- "6. It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is, however, contended that under the Regulations all that Government does, is not to allow the person to be reinstated. Government does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in this manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. On circumstance deserving removal may by over-staying one's leave. This is a fault, which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blamable, was unable to return to duty for over a month, and if later on he wished to join as soon as the said reasons disappeared? Would in such a case Government remove him without any hearing, relying on the regulation? The learned Advocate General said that the question would not be one of removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer.

The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who had absented himself by overstaying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. It this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here." 50. Yet again in Deokinandan Prasad's case (Supra), it was held :- "25. In the case before us even according to the respondents a continuous absence from duty for over five years, apart from resulting in the forfeiture of the office also amounts to misconduct under Rule 46 of the Pension Rules disentitling the said officer to receive pension. It is admitted by the respondents that no opportunity was given to the petitioner to show cause against the order proposed. Hence there is a clear violation of Article 311. Therefore, it follows even on this ground the order has to be quashed." 51. The Apex Court again in Syndicate Bank's case (Supra held:- "18. The Bank has followed the requirements of Clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayandanda had submitted his explanation, which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayandanda and it is he who default and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in Clause 16 of the Bipartite Settlement." 52. We may now consider the decisions cited by Mr. Sabharwal. 53. In Aligarh Muslim University's case (Supra), the impugned Rule was in the following terms:- "10. It reads as follows: Overstayal of leave:"5.8(i) If an employee absents himself from duty without having previously obtained leave or fails to return to his duties on the expiry of leave without having previously obtained

further leave, the head of the department/office concerned in cases where he is the appointing authority, after waiting for three days, shall communicate with the person concerned asking for an explanation and shall consider the same. In cases where the head of the department/office is not the appointing authority, he shall, after waiting for three days from the date of unauthorized absence without leave or extension of leave, inform the Registrar/Finance Officer, and the Registrar (Finance Officer in the case of staff borne on the Accounts Cadre) shall communicate with the person concerned asking for an explanation which shall be submitted to the vice-Chancellor/Executive Council. Unless the appointing authority regards the explanation satisfactory, the employee concerned shall be deemed to have vacated the post, without notice, from the date of absence without leave. (ii) An officer or other employee who absents himself without leave or remains absent without leave after the expiry of the leave granted to him, shall, if he is permitted to rejoin duty, be entitled to no leave allowance or salary for the period of such absence and such period will be debited against his leave account as leave without pay unless his leave is extended by the authority empowered to grant the leave. willful absence from duty after the expiry of leave may be treated as misconduct for the purpose of Clause 12 of Chapter IV of the Executive Ordinance of AMU and para 10 of Chapter IX of Regulations of the Executive Council." It was held :- "11. It will be seen that Rule 5(8)(i) applies to an employee who absents himself from duty without having previously obtained leave or where he has failed to return to his duties on the expiry of leave without having previously obtained further leave. Then Rule 5(8)(i) refers to the manner in which the employee is to be given an opportunity. If the appointing authority regards the explanation as not satisfactory, the employee concerned shall be deemed have vacated his post, without notice, from the date of absence without leave. In the context of Rule 10 of the 1972 Rules, which deems vacation of post if the absence was for 5 years, it must follow that the above Rule 5(8)(i) applies to absence for a period less than 5 years." 54. In that case, thus, there exists a provision requiring compliance of the principles of natural justice. 55. Rule 10(c)(i) & (ii) Aligarh Muslim University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1972 were in the following terms:- "10. Employee absent from duty.–(a)-(b) (c) (i) No permanent employee shall be granted leave of any kind for a continuous period exceeding five years.; (ii) when an employee does not resume duty after remaining on leave for a continuous period of five years, or whether an employee after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension for any period which together with the period of the leave granted to him exceeds five years, he shall, unless the Executive Council in view of the exceptional circumstances of the case otherwise determine, be deemed to have resigned and shall accordingly cease to be in the university service." 56. In view of the said provision, it was held :- "It will be seen that Rule 10 deals with a different aspect. Now Rule 10(c)(i) states that no permanent employee shall be granted leave of any kind for a continuous period of more than 5 years. However, Rule 10(c)(ii) states that when an employee does not resume duty after remaining on leave for a continuous period of 5 years, or where an employee after the

expiry of his leave remains absent from duty (otherwise) than on foreign service or on account of suspension) for any period which together with the period of the leave granted to him exceeds 5 years, he shall (unless the Executive Council in view of the exceptional circumstances of the case of otherwise determine), be deemed to have resigned and shall accordingly cease to be in the university service. This is the purport of Rule 10(c)..” 57. The impugned provision is not in pari-materia with the Rule 10(e) of the Aligarh Muslim University Non-teaching Employees (Terms and Conditions of Service) Rules, 1972. 58. In Punjab & Sind Bank’s case (Supra), the Apex Court was concerned with Clause 16 of Fourth Bipartite Settlement in terms whereof in the event an employee absents from duty for 90 days or more, the consecutive days beyond the period of leave originally sanctioned or subsequently extended, the Management may give notice to the employee calling upon him to report for duty within 30 days of the notice and in the event, he does not do so, the said clause could be invoked. The Apex Court, in the aforementioned fact situation, held:- “4. A reading of Clause XVI of IV bipartite settlement will make it clear that in the event an employee absents himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended the management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the bank’s service on the expiry of the time fixed in the said notice. In the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the bank’s right to take any action under the law or rules of service. 5. If the respondent had submitted an explanation regarding his unauthorized absence or placed any material before the court that he did report for duty but was not allowed to join duty, inquiry may have been necessitated but not otherwise. In this case, the respondent employee had defaulted in not offering any explanation regarding his unauthorized absence form duty nor did he place any material to show that he reported for duty within 30 days of notice as required by Clause XVI of IV bipartite settlement.” 59. Yet again the said decision was rendered in a different situation. 60. In Hari Pada Khan’s case (Supra), the relevant Standing Order No. 20-IV of the Indian Oil Corporation was in the following terms:- “Where a workman has been convicted for a criminal offence in a Court of Law or where the General Manager is satisfied for reasons to be recorded in writing, that there is neither expedient nor in the interest of security to continue the workman, the workman may be removed or dismissed from service without following the procedure laid down under III of this clause.” It was held:- “5. The doctrine of principle of natural justice has no application when the authority concerned is of the opinion that it would be inexpedient to hold an

enquiry and that it would be against the interest of security of the Corporation to continue in employment the offender-workmen when serious acts are likely to affect the foundation of the institution. In Union of India v. Tulsiram Patel, a Constitution Bench of this Court upheld the validity of the similar provisions under Article 311 of the Constitution. Recently, in SLP (C) No. 11659 of 1992 the matter had come up before this Court on 13-11-1995, where the validity of a pari materia provision was questioned. This Court upheld the validity stating that the above clause will operate prospectively." 61. Thus in that case also the compliance of the principles of natural justice was held to be necessary. 62. In J.K. Cotton Spinning and Weaving Mills Company's case (Supra), it was held that when an employee voluntary tenders his resignation, the same would be covered by the expression "voluntary retirement" within the meaning of Clause (i) of Section 25 of the U.P. Industrial Disputes Act, whereas the Regulation 15(10)(c) does not deal with such a situation. The said decision, therefore, has no application in the instant case. 63. In Gujarat Steel Tubes's case (Supra), the Apex Court observed :- "... But fine words do not butter parsnips and law, in its intelligent honesty, must be blunt and when it sees a spade, must call it a spade. The action taken under the general law or the standing orders was illegal in the absence of individualized charge-sheets, proper hearing and personalized punishment, if found guilty. None of these steps having been taken, the discharge orders were still born." It was held :- "47. Right at the forefront falls the issue whether the orders of discharge are, as contended by Sir Tarkunde de factor dismissals punitive in impact and, therefore, liable to be voided if the procedural imperatives for such disciplinary action are not complied with even though draped in silken phrases like"termination simpliciter". It is common case that none of the processes implicit in natural justice and mandated by the relevant standing orders have been complied with, were we to construe the orders impugned as punishment by way of discharge or dismissal. But Sri Asoke Sen impressively insists that the orders here are simple terminations with no punitive component, as, on their face, the orders read. To interpret otherwise is to deny to the employer the right, not to dismiss but to discharge, when the law gives him the option. 53. If the severance of service is effected, the first condition is fulfillled and if the foundation or causa causana of such severance is the servant's misconduct the second is fulfillled. If the basis or foundation for the order of termination is clearly not turpitudinous or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then the inference of dismissal stands negated and vice versa. These canone run right through the disciplinary branch of master and servant jurisprudence, both under Article 311 and in other cases including workmen under managements. The law cannot be stultified by verbal haberdashery because the Court will lift the mask and discover the true fact. 54. Master and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeals to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the

termination is. If thus, scrutinized, the order has a punitive flavour in course or consequence, it is dismissal. If its falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he ha the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from this nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used. 55. On the contrary, even if these is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may fell like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here." 64. The said decision, therefore, again runs contrary to the contention of the learned counsel. 65. What is, therefore, material is not the form of the order, but the substance thereof The Apex Court referred to the decision of Shamsher Singh's case for emphasizing that the form of the order may not be material. 66. In view of the discussions hereinbefore, we are of the opinion that the judgment of the learned Single Judge cannot be faulted with. 67. These Letters Patent Appeals are, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.