Ajit Kumar Nag vs G.M.(P.J.)Indian Oil Corporation. ... on 19 September, 2005

Equivalent citations: 2005 LAB LR 1137, 2005 (7) SLT 202, AIR 2005 SUPREME COURT 4217, 2005 (7) SCC 764, 2005 AIR SCW 4986, 2005 LAB. I. C. 4194, 2005 AIR - JHAR. H. C. R. 2496, (2005) 8 JT 425 (SC), 2005 (9) SRJ 117, 2006 (1) SERVLJ 267 SC, 2005 (7) SCALE 409, (2006) 1 SERVLJ 267, (2006) 1 ALLMR 2 (SC), 2006 (1) ALL MR 2 NOC, 2005 SCC (L&S) 1020, (2005) 107 FACLR 407, (2005) 3 CURLR 829, (2005) 3 LABLJ 1129, (2005) 4 LAB LN 344, (2005) 4 SCT 341, (2005) 7 SCJ 307, (2006) 1 SERVLR 808, (2005) 7 SUPREME 85, (2005) 7 SCALE 409

Bench: S.N. Variava, C.K. Thakker, Tarun Chatterjee

CASE NO.:
Appeal (civil) 4544 of 2005

PETITIONER:
Ajit Kumar Nag

RESPONDENT:
G.M.(P.J.)Indian Oil Corporation. Ltd. Haldia & Ors.

DATE OF JUDGMENT: 19/09/2005

BENCH:
S.N. VARIAVA,C.K. THAKKER & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T WITH WRIT PETITION (CIVIL) NO. 703 OF 2004 Hon. C.K. Thakker, J.

Civil Appeal No. 4544 of 2005 is directed against the judgment and order passed by the Division Bench of the High Court of Calcutta on February 6, 2004 in FMA No. 3093 of 2002 confirming the judgment and order passed by the learned single Judge on July 9, 2002 in Writ Petition No. 10667 (W) of 1999.

Writ Petition No. 703 of 2004 is instituted by the petitioner in this Court under Article 32 of the Constitution challenging the validity of Clause (vi) of Standing Order 20 of the Certified Standing Orders of the Indian Oil Corporation Ltd.-respondent herein being arbitrary and against the principles of natural justice.

To appreciate the controversy raised in the matters, relevant facts may be stated in brief.

The appellant in Civil Appeal No. 4544 of 2005 (petitioner in Writ Petition No. 703 of 2004) joined the service of Indian Oil Corporation ('Corporation' for short) at Haldia Refinery in 1973. He was a senior officer of the Corporation. He asserted that all throughout his service record was good and satisfactory. He was sincere and efficient and has worked with dedication. At several occasions, he received appreciation for his work. There was no grievance or complaint by the authorities and he continued to be a 'devoted employee' of the Corporation. It was, no doubt, stated that in 1987, a charge sheet was issued against him but according to the appellant, subsequently, the Corporation was satisfied on the explanation submitted by the appellant that there was no substance in the allegations and the same was, therefore, withdrawn.. On 11th March, 1988, the appellant was promoted as Operator 'A' Special Grade. It is the case of the appellant that his next door neighbour was one Mrs. Parul Jana, who was Sister-in-Charge in the Refinery Hospital at Haldia. Parul Jana was treating the appellant as her brother. The relationship between both the families was close and cordial and whenever necessary, Parul Jana used to call the appellant as one of her family members. Parul Jana suddenly developed heart problem in May, 1999. She was, therefore, required to be admitted for treatment in Apollo Hospital, Madras. At late night hours on 5th May, 1999, two sons of Parul Jana rushed to the appellant in grave anxiety and informed him that they failed to get positive information about their mother and they were extremely worried. They, therefore, requested the appellant to extend his helping hand to get proper information about the health of their mother. The appellant advised them to go to the Refinery Hospital. Since the Refinery Hospital, Haldia had referred the case of Parul Jana to Apollo Hospital, Madras, they would be able to get information from Haldia Hospital. Sons of Parul Jana requested the appellant to accompany them to the hospital. The appellant being an employee and well-known for his work in the hospital, could not refuse the reasonable request of two persons and accordingly accompanied them. On reaching the hospital, they found the office of the Chief Medical Officer, Dr. Bhattacharya, open and he was also available. According to the appellant, two sons of Parul Jana approached Dr. Bhattacharya and requested him to give information about their mother who was ailing and admitted to Apollo Hospital, Madras. Dr. Bhattacharya said nothing in spite of repeated requests by sons of Parul Jana. On the contrary, Dr. Bhattacharya without any reason, flared up and told them that he was not supposed to provide information about Parul Jana to anyone and everyone. When sons of Parul Jana insisted to have information from Dr. Bhattacharya, the latter told them that they should not worry about their mother and in the event of her death, the Corporation would arrange to bring the dead body from Apollo Hospital, Madras to Haldia and the body would be handed over to the sons. According to the appellant, he continued to be a silent spectator all throughout. Sons of Parul Jana were seriously shocked and disturbed on such statement being made and they raised objection against the behaviour of Dr. Bhattacharya. Dr. Bhattacharya called several persons in the hospital and directed them to throw all persons including the appellant out of the hospital premises. Sons of Parul Jana could not control themselves. The appellant was also not spared. Being a heart patient and already had undergone heart surgery, he was very much upset as outsiders brought by Dr. Bhattacharya started pushing and dragging the persons including the appellant and sons of Parul Jana out of the hospital. The appellant was bewildered and motionless for some time. The appellant apprehended that Dr. Bhattacharya would create a situation which may adversely affect appellant's health. There was heated exchange of words which resulted in commotion. There was scuffle on the arrival of outsiders and two sons of Parul Jana out of hospital premises. The appellant immediately contacted the General Manager (Projects) and requested him to help to control the

situation. When the General Manager reached the hospital, the appellant explained the situation to him. The General Manager also met Dr. Bhattacharya to get true and correct facts as to how the incident had happened. The General Manager then advised the appellant to go back. Immediately, the appellant left the hospital. In the entire incident, asserted the appellant, save and except accompanying sons of Parul Jana, he did nothing. He was not involved in the incident in any manner whatsoever. It was the Chief Medical Officer, who alone was responsible for the entire unfortunate situation. He also inflicted injuries on two sons of Parul Jana. Dr. Bhattacharya, however, cooked up a false case against the appellant alleging that the appellant had assaulted and injured him. On 6th May, 1999, i.e. on the next day, the Chief Medical Officer, Dr. Bhattacharya reported to the management that at the late night hours of 5th May, 1999, the appellant led by a bunch of hooligans had visited the hospital, assaulted him, i.e. Dr. Bhattacharya and abused and threatened other officers. On the basis of the said complaint, on the same day, i.e., on 6th May, 1999, the General Manager of the Corporation dismissed the appellant for allegedly assaulting the Chief Medical Officer. No notice was issued, no explanation was sought, no charge sheet was filed, no disciplinary enquiry was instituted and no opportunity of hearing was afforded to the appellant. It was stated that in the interest of security of Refinery, the General Manager had to take firm action immediately. Criminal proceedings were also initiated and a criminal case was filed against the appellant for offences punishable under Sections 147, 149, 341, 323 and 506 of the Indian Penal Code. The General Secretary of Haldia Refinery Employees' Union objected to unlawful and arbitrary dismissal of the appellant and wrote a letter to the Corporation requesting it to reinstate the appellant. No positive action, however, was taken by the Corporation. In the circumstances, the appellant was constrained to approach the High Court of Calcutta by filing a Writ Petition on May 12, 1999. On May 13, 1999, the learned single Judge, in view of the urgency of the matter, dispensed with the requirement of Writ Rules, took up the matter for admission-hearing and directed the appellant to serve copies of the writ petition alongwith annexures upon all respondents within a week and to file affidavit of service on the next returnable date which was fixed as 28th June, 1999. Ex parte ad-interim relief was also granted till June 30, 1999. Being aggrieved by the order passed by the learned single Judge granting ex parte ad-interim relief, the Corporation approached the Division Bench and the Division Bench by an order dated June 22, 1999 set aside the order passed by the learned single Judge. According to the Division Bench, in the facts and circumstances of the case, it was not proper for the learned single Judge to have passed ex parte ad-interim order. The appeal was accordingly disposed of. So far as criminal case is concerned, the learned Judicial Magistrate before whom the case was placed for hearing disposed it of on 5th April, 2002 and the appellant was acquitted. The Writ Petition came up for hearing before the learned single Judge who dismissed it on July 9, 2002. The appellant preferred an appeal before the Division Bench against the order passed by the learned single Judge which, as stated above, came to be dismissed by the Division Bench. Against the said order, the appellant had approached this Court by filing Special Leave Petition on May 17, 2004.

When the matter was placed for admission on July 27, 2004, notice was issued by this Court. On July 25, 2005, it was placed before a two Judge Bench. Leave was granted and the Court passed the following order:

"Delay condoned.

> Leave granted.
>
> In view of the fact that there are conflicting decisions in the case of Workmen of Hindustan Steel Ltd. vs. Hindustan Steel Ltd. & Ors. reported in 1984 (Suppl.) SCC 554 and in the case Haripada Khan vs. Union of India & Ors. reported in 1996(1) SCC 536 it will be appropriate that this matter be considered by a larger Bench. Papers be placed before Hon'ble the Chief Justice for necessary orders."

It may be stated at this stage that on November 20, 2004, the appellant herein instituted a substantive petition under Article 32 of the Constitution and challenged the validity and vires of Clause (vi) of Standing Order 20 of the Certified Standing Orders of the Indian Oil Corporation since he had not challenged the validity of the Standing Orders before the High Court of Calcutta. On January 20, 2005, notice was issued and the Writ Petition was ordered to be tagged with S.L.P.(C) No. 21248 of 2004 (Civil Appeal NO. 4544 of 2005). That is how, both the matters have been placed before us.

We have heard the learned counsel for the parties.

Mr. P.P. Rao, learned Senior Advocate, appearing on behalf of the appellant contended that the respondent-Corporation is 'State' within the meaning of Article 12 of the Constitution and every action of the Corporation, therefore, must be in conformity with the fundamental rights guaranteed by Part III of the Constitution. According to him, Standing Order 20, and in particular Clause (vi) thereof, is arbitrary, irrational and ultra vires Article 14 of the Constitution inasmuch as it empowers and authorizes the General Manager of the Corporation to dismiss an employee without following the rule of audi alteram partem and without observing the principles of natural justice. Such a rule, submitted Mr. Rao, violates the fundamental principles of justice and infringes Article 14. A similar provision in the nature of second proviso to Article 311 (2) of the Constitution have been interpreted in several cases by this Court and it has been held that save and except grave situations, no employee can be dismissed or removed from service without observing the rules of natural justice. Such provisions have also been held to be bad and against public policy under Section 23 of the Contract Act, 1872. Even if there is a term in the contract or in a Rule, it is liable to be struck down as arbitrary and ultra vires Article 14 as also Article 311 (2) of the Constitution. The counsel also submitted that the learned single Judge as well as the Division Bench were wrong in not relying upon the decisions cited at the Bar and in mechanically and blindly applying Clause (vi) of the Standing Order 20.

Even on merits, the appellant could not be held liable. He had merely accompanied the two sons of Parul Jana to the hospital. The unfortunate incident was the result of the behaviour of the Chief Medical Officer for which, he alone was responsible and the appellant could not be punished for the misdeeds of Dr. Bhattacharya. It was further submitted by Mr. Rao that this is a fit case in which necessary guidelines are required to be issued by this Court so that blanket and uncanalised power under the said provision may not be misused by the General Manager. It was also submitted that when the criminal case was registered against the appellant and he was acquitted of the charges leveled against him, it was incumbent on the Corporation to reinstate him in service with full back

wages. Finally, it was submitted that the appellant has reached the age of superannuation. The question of reinstatement is thus academic. It was, therefore, prayed that keeping in view the totality of facts, the order passed by the General Manager may be quashed and set aside by directing the respondent to extend monetary benefits to the appellant.

The learned counsel for the respondent-Corporation, on the other hand, supported the order. It was stated that the appellant cannot be said to be an employee holding "civil post" under Part XIV of the Constitution and, as such, he cannot claim protection of Article 311. He is governed by the Rules, Regulations and Standing Orders of the Corporation. The Corporation is governed by the Certified Standing Orders. Clause (iii) of Standing Order 20 provides for disciplinary enquiry against an employee of the Corporation and taking of appropriate action on the basis of such enquiry. Clause (vi) of Standing Order 20, however, deals with special procedure in certain cases and empowers the General Manager to dismiss or remove a workman in certain circumstances. In bona fide exercise of the said power, the General Manager passed an order on 6th May, 1999 and dismissed the appellant from service. The order is a speaking order recording reasons as to what compelled the General Manager to treat the case as exceptional in nature and the General Manager was constrained to exercise his power under the said provision. It was also submitted that from the order, it is clear that the appellant misbehaved with the staff of the hospital and assaulted the Chief Medical Officer and caused injuries. To ensure maintenance of discipline and taking into account several statements, the General Manager had taken the impugned action. Such an action cannot be said to be arbitrary, irrational or abuse of power. The counsel submitted that acquittal by a criminal court is hardly a relevant factor so far as exercise of power by the General Manager is concerned. Standing Order 20 (vi) relates to special procedure in cases of exceptional nature. Such a provision cannot be said to be ultra vires Article 14 of the Constitution. As far as Article 311 is concerned, it does not apply to employees of the Corporation and hence, it cannot be invoked or pressed into service by the appellant. It was further submitted that the appellant had challenged the order of dismissal by filing a petition but he did not challenge the validity or vires of Clause (vi) of Standing Order 20 before the learned single Judge or before the Division Bench and argued the matter on merits and the case was decided against him. He, therefore, now cannot be permitted to challenge the validity of Clause (vi) of Standing Order 20 before this Court as such challenge would be barred by res judicata or by constructive res judicata. It was also submitted that the order passed by the General Manager is subject to appeal under Standing Order 21 of the Standing Orders and the appellant had exercised the said right by filing an appeal. The Appellate Authority considered the relevant provisions of Standing Orders as also the order dated 6th May, 1999 passed by the General Manager and having applied its mind to the facts and circumstances, dismissed the appeal observing that there was no ground to interfere with the punishment imposed on the appellant. It was, therefore, submitted that no case has been made out by the appellant and the appeal deserves to be dismissed. Since the appellant had not challenged the validity of Clause (vi) of Stranding Order 20 before the High Court, his petition is not maintainable and may also be dismissed.

Having heard the learned counsel for the parties, we are of the view that the appeal as well as the writ petition deserve to be dismissed. So far as preliminary objection as to maintainability of the petition in this Court and the applicability of res judicata in the appeal is concerned, it is true that the appellant had not taken the ground as to vires of Clause (vi) of Standing Order 20 either before

the learned single Judge or before the Division Bench of the High Court. At the same time, however, when he has approached this Court against the decision of the High Court and has raised this ground, it would not be appropriate to preclude him from arguing the case on the vires or validity of Clause (vi) of the Standing Order 20. Moreover, he has also filed a substantive petition for the said purpose under Article 32 of the Constitution. The preliminary objection, therefore, does not impress us and we have allowed both the parties to argue the case on vires of Standing Order 20(vi) as well as on merits.

As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

As far as the status of the appellant is concerned, it must be stated that Mr. Rao, Senior Advocate fairly conceded at the hearing of the appeal and the writ petition that the appellant is not governed by Article 311 of the Constitution since he cannot be said to be 'civil servant'. In this connection, it will be profitable to refer to a decision of the Constitution Bench of this Court in Dr. S. L. Agarwal vs. General Manager, Hindustan Steel Limited (Hindustan Steel Limited I); (1970) 3 SCR 363 ; (1970) 1 SCC 177. In that case, A was appointed as Assistant Surgeon by the Board of Directors of the Corporation for one year. After completion of the probation period, he was employed on contract basis and his services were terminated in accordance with the terms of the contract. He filed a writ petition in the High Court contending that his services were wrongly terminated which was violative of Article 311 of the Constitution. The Corporation contended that Article 311 was not applicable to him as he was employed by the Corporation and he neither belonged to Civil Service of the Union nor held a civil post under the Union.

Upholding the objection and considering the ambit and scope of Article 311, this Court held that an employee of a Corporation cannot be said to have held a 'civil post' and, therefore, not entitled to

protection of Article 311. According to the Court, the Corporation could not be said to be a 'department of the Government' and employees of such Corporation were not employees under the Union. The Corporation has an independent existence and the appellant was not entitled to invoke Article 311. Hindustan Steel Limited (I) has been followed by this Court in several cases. [See Sukhdev Singh & Others v. Bhagatram Sardar Singh Raghuvanshi & Another, (1975) 1 SCC 421 ; Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449 ; A.L. Kalra v. Project & Equipment Corporation of India Ltd., (1984) 3 SCC 316 ; Tekraj Vasandi v. Union of India & Others, (1988) 1 SCC 236 ; Pyare Lal Sharma v. Managing Director & Others, (1989) 3 SCC 448 ; State Bank of India v. S. Vijay Kumar, (1990) 4 SCC 481 ; Satinder Singh Arora v. State Bank of Patiala, (1992) Supp 2 SCC 224] In view of the above pronouncements of this Court, there is no doubt that the respondent-Corporation is right in submitting that the appellant cannot invoke Article 311 by describing him as holding 'civil post' under the Union or a State. Article 311 of the Constitution, therefore, has no application to the facts of the case.

Mr. Rao, however, placed strong reliance on a decision of two Judge Bench of this Court in Workmen of Hindustan Steel Limited & Another vs. Hindustan Steel Limited & Others, (Hindustan Steel II); (1984) Supp SCC

554. In that case, the employer dismissed a workman without holding enquiry and without giving him an opportunity of being heard. The power was exercised under Standing Order 32 of the Certified Standing Orders of Corporation.

Standing Order 32 read thus :

> "32. Special Procedure in certain cases.- Where 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 it is inexpedient or against the interests of security to continue to employ the workman, the workman may be removed or dismissed from service without following the procedure laid down in Standing Order 31."

The language of Standing Order 32 is 'more or less' similar to Standing Order 20 (vi) of the Certified Standing Orders of the respondent- Corporation which reads as under;

> "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 it 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."

The workman challenged the action inter alia on the ground that provision of Standing Order 32 is irrational, arbitrary and violative of Article 311. The Court proceeded to consider the objection against Standing Order 32 on the touchstone of Article 311. Describing the provision as 'archaic standing order reminiscent of the days of hire and fire' relied upon by a public sector undertaking to

sustain an utterly unsustainable order and to justify an action taken in violation of the principles of natural justice, the Court stated that such a provision could not stand. Reproducing Article 311 of the Constitution, the Court held that the minimum requirement of observance of principle of natural justice could not be dispensed with and the action taken by the Corporation was illegal and unlawful. The Court, therefore, directed the Corporation to 'recall and cancel the order' by reinstating the workman. The Corporation was granted an opportunity to recast its Standing Order 32 to be brought in conformity with the second proviso to Article 311(2) of the Constitution.

The endeavour of Mr. Rao before us is that the above case was a case of termination of service of an employee of the Corporation. The Standing Order which came up for consideration in that case was 'more or less' similar to the Standing Order with which we are concerned. In spite of the fact that the employee was engaged by the Corporation, the Court considered the provisions of Article 311 of the Constitution and the principles applicable to civil servants. It was, therefore, submitted that in the present case also, the ratio laid down in that case may be applied and the impugned order passed by the Corporation may be set aside.

We are unable to agree with Mr. Rao. It is no doubt true that the provision which came up for consideration before a two Judge Bench in Hindustan Steel Limited (II) was against an order passed by the Corporation. It was similar to Clause (vi) of Standing Order 20 which this Court is called upon to consider. At the same time, however, it cannot be overlooked that two Judge Bench proceeded to consider the validity of the provision on the anvil of Article 311 which could not be attracted as it was not applicable. The point was settled and finally decided by the Constitution Bench of this Court in Hindustan Steel Limited (I). Unfortunately, however, the attention of the Court was not invited to the said case and in Hindustan Steel Limited (II), the Court proceeded as if the employees of the Corporation were governed by Article 311. Hindustan Steel Limited (II) is thus per incuriam. It could not have applied Article 311 had the attention of the two Judge Bench been drawn to the decision of the Constitution Bench in Hindustan Steel Limited (I).

At the time of admission hearing, reference was also made to another two Judge Bench decision of this Court in Hari Pada Khan vs. Union of India & Others, (1996) 1 SCC 536. In that case, the petitioner who was a permanent staff member of Indian Oil Corporation was involved in theft of oil and a First Information Report was lodged against him. On the basis of that report, a criminal case was registered and he was arrested. Relying on Standing Order 20 (iv) of the Corporation, he was dismissed from service. Standing Order 20(iv), as then stood, was similar to present Standing Order 20(vi) and empowered the General Manager of the Corporation to dismiss a workman if he had been convicted for a criminal offence in a court of law or if the General Manager was satisfied for reasons to be recorded in writing that it was neither expedient nor in the interest of the Corporation to continue the workman in service. Standing Order 20(iv) read thus;

> "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."

The action of the Corporation was challenged by the dismissed employee. Upholding the order of the Corporation, this Court held that the action could be taken. The Court stated that the rule had been made by the Corporation with the intention to prevent an employee of the Corporation served with a charge sheet and arrest in furtherance thereof from continuing in service.

Mr. Rao, however, placed reliance on the following observations :

> "Of course it would be subject to the result of the trial. Continuance of the officer involved in an offence would be an affront to good and disciplined conduct of workmen. His continuance in service of the Corporation would demoralize the service. Therefore, it was most expedient in the public interest not to hold any further enquiry and terminate his services forthwith. However, it would be subject to the result of the trial."

The endeavour of Mr. Rao is that this Court had expressly stated in Hari Pada Khan that an order of dismissal from service would be subject to result of the trial. In the present case, a criminal case was registered against the appellant and he was prosecuted. The prosecution, however, resulted in acquittal of the appellant. As per the ratio in Hari Pada Khan, submitted Mr. Rao, the appellant is entitled to reinstatement.

We are unable to accept the contention. It is true that in Hari Pada Khan, this Court upheld the order of dismissal by expressly observing that it would be subject to result of trial but what Mr. Rao forgets is that in Hari Pada Khan, the power was exercised by the General Manager not under the second part of the Standing Order 20 (iv), but on the first part thereof, which covered cases of conviction of a workman for a criminal offence. The second part dealt with satisfaction of the General Manager about expediency of not keeping a workman in service. Since the power was exercised by the General Manager on the first part and the basis was registration of a of criminal case against the workman, obviously, this Court was justified in observing that when the action was taken on the basis of pendency of a criminal case, the action of dismissal of the workman must abide by the result of the trial. The facts of the case before us are totally different. In this case, the General Manager has exercised the power under the second part of the Standing Order 20(vi) which empowered him to take action on satisfaction for reasons to be recorded in writing that it was not in the interest of security to continue the workman in service. The direction in Hari Pada Khan, therefore, does not apply to the factual matrix of the present case for claiming relief by the appellant.

The appellant in Hari Pada Khan relied upon Hindustan Steel Limited (II), and submitted that in that case, this Court struck down a similar provision being violative of natural justice and also violative of Article 14. The Court, however, held that the principles of natural justice had no application when the authority was of the opinion that it would be inexpedient to hold an enquiry and it would be against the interest of security of the Corporation to continue in employment the offender workman when serious acts were likely to affect the foundation of the institution. The Court also noted that a similar provision was held valid and intra vires by this Court in Mathura Refinery Mazdoor Sangh v. Deputy Chief Labour Commissioner & Others, Special Leave Petition

(Civil) NO. 11659 of 1992, decided on November 13, 1995.

Mr. Rao then contended that even though the provision of Article 311 of the Constitution do not apply to the appellant being an employee of the Corporation, the general principles behind the said provision would apply to the employees of the Corporation also. He, therefore, submitted that while dealing with the case of an employee of the Corporation, second proviso to Article 311(2) and the decisions of this Court in interpreting the said provision would be kept in mind by the Court. He also submitted that the Corporation, being the "State" within the meaning of Article 12 of the Constitution, Article 14 would apply to the respondent and an order passed or action taken arbitrarily and without complying with the principles of natural justice must be held null and void.

Reference in this connection was made to a decision of Constitution Bench in Union of India & Another vs. Tulsi Ram Patel, (1985) 3 SCC 398. In Tulsi Ram Patel, certain civil servants were dismissed from service by way of penalty by the Government by invoking the second proviso to Article 311(2) of the Constitution. They challenged the validity of the orders inter alia on the ground that the action was against the principles of natural justice and second proviso to Article 311(2) could not have been invoked. This Court was, therefore, called upon to consider the legality and validity of the orders in the light of the provisions of Article 311 (2) and observance of principles of natural justice.

By majority of 4 : 1, the Court upheld the action of the Government of invoking exceptional power under the second proviso to Article 311(2). The Court observed that the principles of natural justice have come to be recognized as a part of the guarantee contained in Article 14 of the Constitution and violation thereof would mean that the action would be arbitrary and irrational. The Court also stated that Article 311(2) required that before a civil servant is dismissed, removed or reduced in rank, an enquiry must be held and reasonable opportunity of being heard must be afforded to him in respect of the charges leveled against him. The Court, however, observed that in certain circumstances, application of the principles of natural justice could be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in taking of prompt action, such a right could be excluded. It could also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim audi alteram partem could not be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands. The Court stated that if legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all pervading sanctity than a statutory provision. It also stated that the principles of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to Article 311(2), it could not be reintroduced by a side door by providing for the enquiry. The Court, however, hastened to add that where the second proviso to Article 311(2) is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action would be mala fide and void. In such a case, invalidating factor may be refereable to Article 14. The second proviso to Article 311(2) was based on public policy, in public interest and for public good and it must be given effect to. Regarding opportunities to such Government servants

who have been dealt with in exercise of power under the second proviso to Article 311(2), the Court stated :

> "In this connection, it must be remembered that a government servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of a State because they being the highest constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice. In Maneka Gandhi case and in Liberty Oil Mills v. Union of India, the right to make a representation after an action was taken was held to be a sufficient remedy, and an appeal is a much wider and more effective remedy than a right of making a representation."

The submission of Mr. Rao is that second proviso to Article 311(2) deals with three situations,

(i) where a person is convicted on a criminal charge;

(ii) where the disciplinary authority is satisfied for the reasons to be recorded in writing that it is not reasonably practicable to hold an enquiry; and

(iii) where the President or Governor is satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry.

According to Mr. Rao, Clause (vi) of Standing Order 20 likewise takes into account two eventualities;

(i) conviction of a workman for a criminal offence by a court of law; and

(ii) satisfaction of the General Manager for reasons to be recorded in writing that it is neither expedient nor in the interest of security to continue a workman.

He submitted that the power under Clause (vi) of Standing Order 20 is a serious inroad on the right of a workman and must be construed strictly. In other words, it is a drastic provision which totally excludes application of natural justice and audi alteram partem rule and that too on satisfaction of General Manager and not of the Corporation. Clause

(c) of second proviso to Article 311(2) of the Constitution envisages the satisfaction of constitutional functionary, i.e. President of India or Governor of a State. In the case of the respondent-Corporation, however, the power is conferred on General Manager an officer of the

Corporation. If this provision is upheld, there is every possibility and likelihood of power being abused or misused. Such provision must, therefore, be held arbitrary and ultra vires of Article 14.

We are unable to agree with the learned counsel. The law is clear on the point. Tulsi Ram Patel dealt with a similar provision and held it to be constitutionally valid and intra vires Article 14. Since it related to civil servants under the Union or under a State, Clause (c) provided for the satisfaction by the President or the Governor, as the case may be, "in the interests of the security of the State". Certified Standing Orders of the respondent-Corporation have limited application to the Corporation. There was, therefore, no question of security of State and hence, the limited power is conferred on the General Manager of security of the Corporation. General Manager is the highest administrative head of the Corporation. So it cannot be contended that the power has been conferred on a petty officer of the Corporation.

We are equally not impressed and hence unable to uphold the contention that Clause (vi) of Standing Order 20 confers blanket or uncanalised power on the General Manager. In our judgment, sufficient guidelines and safeguards have been provided in the Standing Orders, themselves, such as (i) the power is conferred on the highest administrative head of the Corporation; (ii) eventualities have been specifically and expressly stated in Clause (vi) of Standing Order 20; (iii) satisfaction of the General Manager that such an eventuality has arisen;

(iv) recording of reasons in writing; and (v) right of appeal against the decision of the General Manager. Such a provision, in our considered view, cannot be held arbitrary or unreasonable, violative of Article 14 of the Constitution.

Mr. Rao may be right in submitting that in a given case, the General Manager may not exercise the power legally, properly and reasonably. In that case, the action would be held bad. Apart from the fact that there is an appeal against the order passed by the General Manager, an aggrieved party can also approach a High Court under Article 226/227 of the Constitution and/or this Court under Article 32/136 of the Constitution. Judicial review conferred on High Courts and on this Court by the Constitution remains unfettered and unaffected.

It is well settled that a provision which is otherwise legal, valid and intra vires cannot be declared unconstitutional or ultra vires merely on the ground that there is possibility of abuse or misuse of such power. If the provision is legal and valid, it will remain in the statute book. Conversely if the provision is arbitrary, ultra vires or unconstitutional, it has to be declared as such notwithstanding the laudable object underlying it.

Before about five decades in A. Thangal Kunju Musaliar v. M. Venkitachalam Potti & Anr. 1955 (2) SCR 1196, dealing with a similar contention, speaking for the Constitution Bench, Bhagwati, J. stated;

> "It is to be presumed, unless the contrary were shown that the administration of a particular law would be done "not with an evil eye and unequal hand" and the selection made by the Government of the cases of persons to be referred for

investigation by the Commission would not be discriminatory."

Again, in the leading case of State of Rajasthan & Others v. Union of India & Others, (1977) 3 SCC 592, a seven-Judge Bench was called upon to consider a similar argument. It was urged that extraordinary power conferred by Article 356 of the Constitution could be abused.

Negativing the contention, Bhagwati, J. (as he then was) stated;

> "It must be remembered that merely because power may sometime be abused, it is no ground for denying the existence of the power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief". (emphasis supplied) Very recently, in Sushil Kumar Sharma v. Union of India & Others, (2005) 6 SCC 281, constitutional validity of Section 498-A of the Penal Code was challenged inter alia on the ground of its misuse and/or abuse. A prayer similar to one which has been made before us by Senior Advocate Mr. Rao was also made in Sushil Kumar Sharma that in case the provision is held to be constitutional and intra-vires, this Court may formulate "guidelines" so that innocent persons are not victimized by unscrupulous elements making false accusations. Reiterating the principle that mere possibility of abuse of legal provision would not make a statute invalid, the Court rejected the prayer.
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> Since, in our opinion, sufficient safeguards have been provided in the Standing Orders and action taken by the General Manager under Standing Order 20(vi) could be challenged in appeal under Standing Order 21 and in the High Court under Article 226/227 and in this Court under Article 32/136 of the Constitution, the same cannot be held arbitrary, unreasonable or ultra vires Article 14 of the Constitution. If in a given case, there is abuse or mis-use of power, such action or order would be bad. It would, however not make Standing Order 20(vi) ultra vires.
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> In our opinion, the learned counsel for the respondent - Corporation, is right that Standing Order 21 which enables the aggrieved party to file an appeal is very wide. It reads thus:

"21. Appeals :

> The authorities competent to impose various penalties mentioned in Standing Orders No. 20 as well as the appellate authorities shall be notified by the management from time to time. A workman on whom any of the penalties is imposed shall have the right of appeal to the authority notified in this behalf. The appeal shall be submitted within 15 days of receipt of the order of the punishing authority, and the appellate authority, shall dispose of the appeal within 30 days of receipt of the appeal.

At the further enquiry, if any, held in the appeal, the workman concerned shall be afforded reasonable opportunity of explaining and defending his action with the assistance of a co-worker and the Presenting Officer may also be given the opportunity to furnish further evidence. The appellate authority may also impose enhance penalty after giving an opportunity to the applicant to show cause."

Plain reading of the above Standing Order makes it abundantly clear that a workman on whom any of the penalties is imposed has a right to appeal and the Appellate Authority has to decide such appeal of a workman in accordance with law after affording him reasonable opportunity. It also allows the appellant-workman to have assistance of a co-worker. It, therefore, cannot be said that once an action is taken under Clause (vi) of Standing Order 20, the matter is over. In view of exceptional situation contemplated by Clause (vi) and on satisfaction of the General Manager that an immediate action is necessary, he can dismiss or remove the workman. Such workman, however, may invoke Standing Order 21 and may file an appeal and convince the Appellate Authority that the action taken by the General Manager in purported exercise of power under Standing Order 20(vi) was unlawful or improper. If the Appellate Authority is satisfied, it may set aside the action of the General Manager and grant appropriate relief to the workman. Even if the Appellate Authority holds against the workman and confirms the order of dismissal/removal, judicial review is available to the aggrieved appellant, albeit on limited grounds. To us, therefore, it is clear that the Standing Order 20(vi) allows the General Manager to take an action in emergency keeping in view exceptional situation which has arisen and he is satisfied that the workman should be removed or dismissed from service without following procedure laid down in Standing Order 20(iii). Whereas Standing Order 20(iii) deals with cases in general and provides enquiry and pre-decisional hearing, Standing Order 20(vi) is an exception to the general rule and deals with special cases under which an action can be taken. Since appeal is provided in all cases, the case is one of post- decisional hearing.

We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post- decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of audi alteram partem. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten forbidden fruit. [See R.v. University of Cambridge, (1723) 1 Str 557]. But we are also aware that principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straight-jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated ; "To do a great right after all, it is permissible sometimes to do a little wrong". [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India, (Bhopal Gas Disaster);

(1990) 1 SCC 613] While interpreting legal provisions, a court of law cannot be unmindful of hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'.

Mr. Rao urged that the General Manager has mechanically and without considering the facts of the case has passed the order under Standing Order 20(vi) and on that ground also, it deserves to be set aside. Now, the order passed by the General Manager in the exercise of power under Standing Order 20(vi) dated 6th May, 1999 is on record. It is a self- contained order. Detailed reasons have been recorded by the General Manager inter alia stating that the appellant herein had led a bunch of hooligans to Haldia Refinery Hospital and assaulted and abused Dr. Bhattacharya, the Chief Medical Officer, when he was in the hospital alongwith other doctors attending a critical patient in the indoors. The appellant had slapped, kicked, pushed around and dragged Dr. Bhattacharya. The appellant alongwith his associates prevented anyone present there from making any contact outside even on phone. On coming to know about the incident, some officers reached the site. They were also abused and threatened by the appellant. The General Manager then went through the complaints/reports of various persons present during and immediately after the incident and on careful examination of the material, he was satisfied that the appellant indulged himself in the acts of violence without any valid reason or compelling circumstances or provocation. Those acts of appellant resulted into an atmosphere of terror being created within the hospital premises. The doctors of the hospital have jointly submitted a representation expressing their concern and demoralizing and terrorising effect that was created in the minds of the hospital staff. The General Manager also noted that the situation had arisen out of the incident which resulted into suspension of the hospital services resulting into great inconvenience being caused to the residents of the Refinery Township. The Officers' Association which was the recognized Union had condemned the incident and demanded stern action. The General Manager perused the Memorandum submitted to him by the representative of Indian Medical Association of Haldia and Chaitanyapur Branches and the Association of Health Services Doctors (WB), Haldia Branch, condemning the incident and assault on Dr. Bhattacharya. The General Manager noted that the appellant was not directly connected with the case of Parul Jana, the Head Sister-in-Charge of Haldia Hospital, who was undergoing treatment at Apollo Hospital, Madras, which was reported to be undertaken on 3rd May, 1999 successfully. The General Manager was satisfied that the acts of the appellant of threatening, intimidating and assaulting senior officer of the Refinery Hospital and abusing and behaving unmannerly with superior authority amounted to subversive and prejudicial to the interest of the Corporation. He was also 'satisfied' and 'convinced' that the said acts of misconduct were 'very grave and serious'. Those acts jeopardized the normal operation not only of the Refinery Hospital but also of the Corporation. Besides carefully examining the facts and circumstances, the General

> Manager also examined the past record of the appellant. The appellant was issued with a punishment of withholding four annual increments with cumulative effect for acts of misconduct. The Management, however, took a lenient and magnanimous view and revised the punishment twice, first on March 12, 1990 and then on February 4, 1997, thereby bringing down the punishment to withholding of only one annual increment with non-cumulative effect. According to the General Manager, the appellant indulged in the acts of misconduct without any provocation or compelling circumstances. He was, therefore, satisfied that for serious and grave acts, action was required to be taken again him. According to the General Manager, keeping in view the magnitude of the issues involved and in the interest of restoring and maintaining normal discipline and morale of employees of the Corporation, and the Hospital Staff in particular and to immediately restore the confidence of the Officers' community, of their security in due discharge of their duties honourably and fearlessly, and in the interest of the security of the Refinery, firm action was necessary. He was convinced that delay would seriously jeopardize the interest of the Corporation especially the vital requirement of providing Medical Services to the sick and needy and the serious impact the incident may have on the normal operation of the Refinery. On those grounds, and in the facts and circumstances, the General Manager was satisfied that it was not in the interest of the security of the Refinery and Staff to continue the appellant in the employment of the Corporation and accordingly he had dispensed with the enquiry under Standing Order 20(iii) and exercised power under Standing Order 20(vi) and passed the impugned order. In our opinion, such action can never be termed arbitrary, irrational or unreasonable.

When the appellant preferred an appeal against the order passed by the General Manager, the Appellate Authority considered the facts and circumstances of the case and dismissed the appeal by an order dated 11th December, 2001. The Appellate Authority noted that the appellant in his Memorandum of Appeal did not deny various acts of misconduct leading to the serious incident of 6th May, 1999 at Haldia Refinery. The appellant also did not put forward any explanation or provocation for the unfortunate incident but had accepted that he engaged in certain acts which he would not like to remember. The Appellate Authority, therefore, held that the acts of misconduct were 'very grave and serious' and were committed without provocation or compelling circumstances. The Appellate Authority also observed that Dr. Bhattacharya sustained several injuries in the attack. According to the report issued by Dr. Bimal Maiti, an independent doctor at Haldia Hospital, Dr. Bhattacharya had the following injuries on his person; (1) large echymosis in front of right thigh;

(2) large echymosis over right back of thigh;

(3) small abrasion over the nose (It);

(4) large bruise over cheek (It);

(5) multiples scratches over cheek;

(6) tender bruise over right elbow; and (7) haematonia just below the right elbow.

According to the Appellate Authority, therefore, the situation had arisen out of the incident in which it was neither expedient nor in the interest of the security of the Refinery and its personnel to continue the workman any more and the power was exercised by the General Manager under Standing Order 20(vi). The Appellate Authority noted that in past also, the appellant had committed misconduct but a lenient view was taken and the punishment imposed on him was reduced. Such punishment, however, had no any deterrent effect on the appellant and he repeated similar acts of misconduct in 1999. There was, therefore, no ground for further leniency. Taking into account grave and serious misconduct committed and their likely repercussions on the general discipline and safety of officers, the punishment imposed on him needed no interference. Accordingly, the appeal was dismissed.

In our view, in the facts and circumstances of the case, it cannot be said that either the General Manager or the Appellate Authority in coming to the above conclusion had committed any error of law which requires interference in the exercise of power of judicial review by this Court.

In Satyavir Singh & Others v. Union of India & Ors. (1985) 4 SCC 252, a three-Judge Bench of this Court has held that taking of appropriate action in exceptional circumstances is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. Normally, it is the officer on the spot who is the best judge of the situation and his decision should not be interfered with lightly. In Satyavir Singh, this Court considered orders of dismissal passed against some of the employees of Research and Analysis Wing (RAW) without holding inquiry as contemplated by Article 311(2) of the Constitution. The power was exercised by the disciplinary authority under the second proviso to Article 311(2). Reiterating the principles laid down in Tulsi Ram Patel and upholding the action, the Court observed that there are circumstances in which such a drastic action is called for. The Court noted that it was not possible to enumerate the cases in which it would not be reasonably practicable to hold inquiry under Article 311(2), but certain illustrative cases have been highlighted which included activities of terrorizing, threatening or intimidating witnesses who might be giving evidence against a civil servant or threatening, intimidating or terrorizing disciplinary authority or his family members or creating an atmosphere of violence or general indiscipline and insubordination. The Court also indicated that though it was a mandate of the Constitution to record reasons in writing for dispensing with an inquiry, it was not necessary that such reasons should find place in the final order or they should be communicated to the delinquent. It was no doubt emphasised that it would be better if such reasons are recorded in the order itself and communicated to the delinquent officer. Regarding suspension of a civil servant, the Court opined that it is not necessary that the civil servant should be placed under suspension until such time the situation is improved and it becomes possible to hold inquiry against him. According to the Court, it would be difficult to foresee how long the situation would last and when normalcy would return or be restored.

The Court then said ;

> "In certain cases, the exigencies of a situation would require that prompt action should be taken and suspending a civil servant would not serve the purpose and sometimes not taking prompt action might result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities."

In our opinion, ratio laid down in Central Inland Water Transport Corporation v. Brajo Nath Ganguly, (1986) 3 SCC 156 and in Delhi Transport Corporation v. Delhi Transport Corporation Mazdoor Congress, 1991 Supp (1) SCC 600 : JT (1990) 3 SC 725 is not relevant or applicable to the case on hand. In those cases, power had been conferred on the authority to dispense with services of a permanent/confirmed employee. This Court, therefore, held that such a provision cannot be said to be in consonance with law. In Brajo Nath Ganguly, the Court observed that the provision was against public policy reflected in Section 23 of the Contract Act, 1872 and the provision was described as Henry VIII clause.

We have also gone through the decision of the learned single Judge as well as of the Division Bench. It is clear from the record of the case that the Writ Petition was filed by the appellant immediately after the order of dismissal was passed against him and the learned single Judge considered the legality of the order. The learned single Judge perused the relevant record produced at the time of hearing and noted that the alleged incident did take place. All persons requested for taking a strong action against the petitioner (appellant herein) and no lenient view was called for. Even after sons of Parul Jana came down from the 1st floor and informed the petitioner that their mother's condition was stable, the petitioner continued the agitation. Being an employee of the Corporation, the petitioner had no business to lead unruly mob resulting in damage to property and assaulting the hospital-staff who were on duty and were treating patients including a patient having cardiac treatment. The learned single Judge, therefore, concluded ;

> "If such discipline is not considered to be grave, I do not know what more should be appropriate to justify the order of dismissal".

When an intra-court appeal was filed against that order, the Division Bench again considered the contentions raised by the appellant. Dealing with the argument that the documents were not given, it was submitted on behalf of the Corporation that no such prayer was made. The Court, therefore, observed relying on a decision of this Court in Aligarh Muslim University & Others v. Mansoor Ali Khan, AIR 2000 SC 2783 that no prejudice had been caused to the appellant. The Court examined the report and perused the record. It was disclosed from the material placed before the Court that there was a situation which created disorder in the establishment for which police had to be called for and the General Manager (PJ) in-charge had to rush late at night. People were frightened and there was ultimatum by staff-members due to which there was a possibility of break down of the entire system. The Division Bench, therefore, stated; "These are situations with which the person at

the spot has to deal with. The authority on the spot is the best judge of the situation prevailing. It is he who has to assess the situation and take steps". In the light of prevailing circumstances, the Division Bench observed, the action could not be termed as illegal, unlawful or perverse. Regarding mala fide, the Court noted that adequate material had not been placed on record which would go to show that the order was malicious or mala fide. The Division Bench, therefore, dismissed the appeal.

In our view, neither the learned single Judge nor the Division Bench has committed any error of law and/or of jurisdiction which deserves interference in exercise of discretionary jurisdiction under Article 136 of the Constitution. As is clear, the situation has been created by the appellant. It was very grave and serious and called for immediate stern action by the General Manager. Exercise of extraordinary power in exceptional circumstances under Standing Order 20 (vi) in the circumstances, cannot be said to be arbitrary, unreasonable or mala fide. It is well-settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". [vide E.P. Royappa v. State of Tamil Nadu & Anr. (1974) 4 SCC 3]. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high decree of credibility. As Krishna Iyer, J. stated in Gulam Mustafa & Others v. State of Maharashtra & Others (1976) 1 SCC 800; "It (Mala fide) is the last refuge of a losing litigant".

We hold Clause (vi) of Standing Order 20 of the Certified Standing Orders of the respondent-Corporation valid, constitutional and intra vires Article 14 of the Constitution. We also hold the action taken by the General Manager of the respondent Corporation dismissing the appellant petitioner from service as legal and lawful. We thus see no substance either in the appeal or in the writ petition and both are, therefore, dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.