D.K. Yadav vs J.M.A. Industries Ltd on 7 May, 1993

Equivalent citations: 1993 SCR (3) 930, 1993 SCC (3) 259, 1993 AIR SCW 1995, 1993 (3) SCC 259, (1993) 2 LABLJ 696, (1993) 3 SCT 537, 1993 SCC (L&S) 723, (1993) 4 SERVLR 126, 1993 UJ(SC) 2 348, (1993) 2 CURLR 116, (1993) 83 FJR 271, (1993) 67 FACLR 111, 1993 LABLR 584, (1994) 1 PAT LJR 55, (1993) 3 SCR 930 (SC), (1993) 2 GUJ LH 174, (1993) 2 LAB LN 575, (1993) 3 JT 617 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, Kuldip Singh

PETITIONER:
D.K. YADAV

Vs.

RESPONDENT:
J.M.A. INDUSTRIES LTD.

DATE OF JUDGMENT07/05/1993

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KULDIP SINGH (J)
RAMASWAMI, V. (J) II

CITATION:
1993 SCR (3) 930 1993 SCC (3) 259
JT 1993 (3) 617 1993 SCALE (3)39

ACT:
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Constitution of India, 1950:
Articles 14 and 21-Right of private employer to terminate service under certified standing order, without holding any domestic enquiry--Whether violative of principles of natural justice and fundamental rights--Held: Since termination of service results in deprivation of right to livelihood, it is to be effected in accordance with just, fair and reasonable procedure.
Article 141-Precedents-Reconsideration of on new grounds-Whether & when permissible.
Industrial Disputes Act, 1947:

Sections 25F, 25FF and 25FFF-Retrenchment under Certified Standing Orders-Whether attracts principles of natural justice-Whether employer's action to be fair, just and reasonable.
Section 2(oo)--Retrenchment--Meaning and scope of.
Industrial Employment (Standing Orders) Act, 1946:
Section 5--Certified Standing Orders-Absence from duty-Deemed termination of service without enquiry or opportunity of hearing--Validity of--Whether attract principles of natural justice and Articles 14 and 21 of the Constitution-Whether principles of natural justice to be read into clause 13 (2) (iv) of Certified Standing Orders.
Administrative Law:
Rule of natural justice--Aim of--Whether principles of natural justice applicable to both quasi-judicial as well as administrative action.
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HEADNOTE:
The respondent-company terminated the appellant's services on the ground that since he had willingly absented from duty continuously for more than 5 days from December 3, 1980, without leave or prior information of intimation or previous permission of the management, he had been deemed to have left the service of the company on his own and lost the lien and the appointment with effect from December 3, 1980. It relied on clause 13(2) (iv) of the Certified Standing Order in support of its action.
The appellant's plea that despite his reporting to duty on December 3, 1980 and every day continuously thereafter, he was prevented entry at the gate and was not allowed to sign the attendance register and that he was not permitted to join duty without assigning any reasons, was not accepted.
The Labour Court upheld the termination order as legal and valid. It held that the appellant had failed to prove his case, that the action of the respondent was in accordance with the Standing Orders and it was not a termination nor retrenchment under the Industrial Disputes Act and that the appellant in terms of Standing Orders lost his lien on his appointment and was not entitled to reinstatement.
Allowing the appeal of the employee, this Court
HELD:1.1. The action of the management in terminating the appellant's service is violative of the principles of natural justice. Under clause 13 (2) (iv) of Certified Standing Orders, on completion of eight calendar days' absence from duty an employee shall be deemed to have abandoned the services and lost his lien on his appointment. Thereafter, the management is empowered to strike off the name from the Muster Rolls. But it is not correct to say that expiry of eight days' absence from duty brings about automatic loss of lien on the post and nothing more need be

done by the management to pass an order terminating the service and per force termination is automatic. The principles of natural justice must be read into the Standing Order No. 13 (2) (iv). Otherwise, it would become arbitrary, unjust and unfair violating Article 14.

Keshwanand Bharti v. Union of India, [1973] Suppl. S.C.R. 1 and State Bank of India v. Workmen of State Bank of India and Anr. [1991] 1 S.C.C. 13, referred to.

1.2. In the instant case,admittedly,the management did not conduct any domestic enquiry nor gave the appellant any opportunity to put forth his case.

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The Labour Court did not record any findings on the appellant's plea that despite his reporting to duty on December 3,1980 and on all subsequent days and readiness to, join duty he was prevented from reporting to duty, nor he was permitted to sign the attendance register, but held that the management had power under clause 13 of the Certified Standing Orders to terminate the service of the appellant. Under the circumstances, the award of the Labour Court is set aside. The respondent should reinstate the appellant forthwith with 50 per cent of the back wages.

2.1. Certified Standing Orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely, the Industrial Disputes Act made exceptions for the application of principles of natural justice by necessary implication from specific provisions in the Act like Sections 25F, 25FF, 25FFF etc. The need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily, to a service of such temporary workmen to meet such exigencies and as soon as the work or service is completed, the need to dispense with the services may arise. In that situation, on compliance of the provisions of Section 25F resort could be had to retrench the employees in conformity therewith. Particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects, the principles of natural justice would apply unless the employer should justify the exclusion on given special and exceptional exigencies.

Col. J.N. Sinha v. Union of India & Anr., [1971] 1 S.C.R. 791, relied on.

3.1. Application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily affecting the rights of the concerned person. No decision must be taken which will affect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. An order involving civil consequences must he made consistently with the rules of natural justice. It is not so much to act judicially but to act fairly, namely, the procedure adopted must he just, fair and

reasonable in the particular circumstances of the case.

3.2. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 of the Constitution and such law would be liable to be tested on the anvil of Article 14. The procedure prescribed by a

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statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of the Article. 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 14 has a pervasive processual potency and versatile quality, equalitarian it its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. Therefore, the principles of natural justice are part of Article 14 and the procedure prescribed by law must be right, just, fair and reasonable and not arbitrary, fanciful or oppressive.

Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors. [1978] 2 S.C.R. 272; State of Orissa v. Dr. (Miss) Binapani Dei & Ors., [1967] 2 S.C.R. 625; State of West Bengal v. Anwar Ali Sarkar, [1952] S.C.R. 284 and Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621, relied on.

Blak's law Dictionary 4th Edn. p. 1487; referred to.

4. Article 21 of the Constitution 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 defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice.

Delhi Transport Corpn. v. D. T.C. Mazdoor Congress, and Ors., [1991] Suppl. 1 S.C.C. 600, relied on.

5.1. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded.

5.2. 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 enquiry is to

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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 must logically be applicable both to quasi-judicial enquiry and administrative enquiry and not only to quasi-judicial enquiry.
A. K. Kriapak and Ors. v. Union of India & Ors. [1969] 2 S.C.C. 262, relied on.
6.1. An authoritative law laid after considering all the relevant provisions and the previous precedents is no longer open to be recanvassed on new grounds or reasons that may be put forth in its support unless the Court deemed it appropriate to refer to a larger bench in the larger public interest to advance the cause of justice.
Ambika Prasad Mishra v. State of U. P. & Ors. [1980] 3 S.C.C. 7 10 and Keshwanand Bharti v. Union of India, [1973] Suppl. S.C.R. 1, relied on.
6.2. The Constitution Bench in fact went into the self same question visa-vis the right of the employer to fall back upon the relevant provision of the Certified Standing Orders to terminate the service of the workman/employee. Therefore, it is not correct to say that since the present appeal was deleted from the Constitution Bench to be dealt with separately, the finding of the Constitution Bench deprived the respondent of putting forth the plea based on clause 13 of the Certified Standing Order to support the action in question and the respondent is entitled to canvass afresh the correctness of the view of the Constitution Bench.
7. The definition of 'retrenchment' in Section 2(oo) of the Industrial Disputes Act, 1947 is a comprehensive one intended to cover any action of the management to put an end to the employment of an employee for any reason whatsoever.
Punjab Land Development and Reclamation Corpn. Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and Ors., [1990] 3 S.C.C. 632; State Bank of India v. Sri N. Sundara Mani, [1976] 3 S.C.R 160; Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee & Ors., [1978] 1 S.C.R. 591; Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, [1977] 1 S.C.R. 586: Robert D' Souza v. Executive Engineer Southern Railway, and Anr., [1982] 1 S.C.C. 645 and H.D. Singh v. Reserve Bank of India & Ors., [1985] 4 S.C.C.201, referred to.
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 166 (NL) of 1983.

From. the Award dated 19.4.1982 of the Labour Court, Haryana at Faridabad in Reference No. 227 of 198 1.

R.K. Jain, R.P. Singh, Aseem Malhotra, Ashish Verma, Manoj Goel, R.K. Khanna and Ms. Abha R. Sharma for the Appellant. Dr. Anand Prakash, Ghosh for M/s Fox Mandal & Co. and Som Mandal for the Respondent.

The Judgment of the Court was delivered by K. RAMASWAMY, J. This appeal by special leave is against the award of the Labour Court, Haryana at Faridabad dated April 19, 1982 which was published in the State Gazette on August 10, 1982.It upheld the termination of the appellant's service as legal and valid. The respondent, by its letter dated December 12, 1980 which was received by the appellant on December 19, 1980, intimated that the appellant wilfully absented from duty continuously for more than 8 days from December 3, 1980 without leave or prior information or intimation or previous permission from the management and, therefore, "deemed to have left the service of the company on your own account and lost your lien and the appointment with effect from December 3, 1980." In support thereof reliance was placed on clause 13 (2) (iv) of its Certified Standing Order. The appellant averred that despite his reporting to duty on December 3, 1980 and everyday continuously thereafter he was prevented entry at the gate and he was not allowed to sign the attendance register. He pleaded that he was not permitted to join duty without assigning any reasons. His letter of December 3, 1980 was marked herein as Annexure 'A' wherein he explained the circumstances in which he was prevented to join duty. The Tribunal found that the appellant had failed to prove his case. The action of the respondent is in accordance with the standing Orders and it is not a termination nor retrenchment under the Industrial Disputes Act, 1947 for short 'the Act'. The appellant in terms of standing orders lost his lien on his appointment and so is not entitled to reinstatement.

Clause 13 (2) (iv) standing order reads thus:

> "If a workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless.
>
> (a) he returns within 3 calander days of the commencement of the absence of the expiry of leave originally granted or subsequently extended as the case may be; and
>
> (b) explains to the satisfaction of the manager/management the reason of his absence o r his inability to return on the expiry of the leave, as the case may. The workman not reporting for duty within 8 calander days as mentioned above, shall be deemed to have automatically abandoned the services and lost his lien on his appointment. His name shall be struck off from the Muster Rolls in such an eventuality."

A reading thereof does indicate that if a workman remains absent without sanction of leave or beyond the period of the leave originally granted or subsequently extended the employee loses his lien on employment unless he returns to duty within eight calander days of the commencement of the absence or the expiry of leave either originally granted or subsequently extended. He has to give a satisfactory explanation to the Manager/Management of his reasons for absence or inability to return to the duty on the expiry of the leave. On completion of eight calander days' absence from

duty he shall be deemed to have abandoned the services and lost his lien on his appointment. Thereafter the management has been empowered to strike off the name from the Muster Rolls.

Section 2(oo) of the Act defines 'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman, or

(b) retirement of the workman on reaching the age of superannuation of the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or

(c) termination of the service of a workman on the ground of continued ill health."

Section 25F prescribes mandatory procedure to be followed before the retrenchment becomes valid and legal and violation thereof visits with invalida-

tion of the action with consequential results. In Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and Ors., [1990] 3 SCC 632 the Constitution Bench considered the scope of the word 'retrenchment' defined by s.2(oo) and held in para 71 at page 716 that "analysing the definition of retrenchment in Section 2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in Clauses (a) and (b) namely, voluntary retirement and retirement on reaching the stipulated age of retirement or on the grounds of continued ill health. There would be no violational element of the employer. Their express exclusion implies that those would otherwise have been included". In para 77 at page 719 it was further held that "right of the employer and the contract of employment has been effected by introducing Section 2(oo)". The contention of the management to terminate the service of an employee under the certified standing Orders and under the contracts of employment was negatived holding that the right of the management has been effected by introduction of s. 2(oo) and s. 25F of the Act. The second view was that the right as such has not been effected or taken away, but only an additional social obligation has been imposed on the employer to abide by the mandate of s. 25F of the Act to tide over the financial difficulty which subserves the social policy. This court relied on the maxim-Stat pro ratione valuntas populi; the will of the people stands in place of a reason. In paragraph 82 at page 722 this court concluded that the definition in s.2(oo) of the Act of retrenchment means "the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section". Same view was taken by three benches of three Judges of this Court in State Bank of India v. Sri N. Sundara Mani; [1976] 3 SCR 160 ; Delhi Cloth & General Mills Lid. v. Shambhu Nath Mukherjee & Ors [1978] 1 SCR 591 and Hindustan Steel Ltd. v. The Presiding Officer. Labour Court [1977] 1 SCR 586 and two benches of two judges in Robert D'Souza v. Executive Engineer, Southern Railway and Anr. [1982] 1 SCC 645 and H. D. Singh v. Reserve Bank of India and Ors. [1985] 4 SCC 201 took the same view. Therefore, we find force in the contention of Sri R. K. lain, the learned Senior counsel for the appellant that the definition 'retrenchment' in S.2(oo) is a comprehensive one intended to cover any action of the management to put an end to the employment of an employee for any reason

whatsoever. We need not, however, rest our conclusion on this point as in our considered view it could be decided on the other contention raised by Sri Jain that the order is violative of the principles of natural justice. We are impressed with that argument. Before dealing with it, it is necessary to dispose of inter related contentions raised by Dr. Anand Prakash.

The contention of Dr. Anand Prakash that since this appeal was deleted from the constitution bench to be dealt with separately, the finding of the constitution bench deprived the respondent of putting forth the contention based on Cl. 13 of the certified standing order to support impugned action and the respondent is entitled to canvass afresh the correctness of the view of the constitution bench is devoid of force. It is settled law that an authoritative law laid after considering all the relevant provisions and the previous precedents, it is no longer open to be recanvassed the same on new grounds or reasons that may be put forth in its support unless the court deemed appropriate to refer to a larger bench in the larger public interest to advance the cause of justice. The constitution bench in fact went into the self same question vis-a-vis the right of the employer to fall back upon the relevant provision of the certified standing Orders to terminate the service of the workman/employee. By operation of S. 2(oo) the right of the employer under Cl.13(2) (iv), and the contract of employment has been effected. Moreover in Ambika Prasad Mishra v. State of U.P. and Ors., [1980] 3 SCC 719 at 72-23 para 5 &

6. A constitution bench held that every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. It does not lose its authority 'merely' because it was badly argued, inadequately considered and fallaciously reasoned. In that case the ratio of this court on Art. 31A decided by 13 Judges bench in Keshwanand Bharti v. Union of India [1973] Suppl. SCR was sought to be reopened but this court negatived the same. His contention that expiry of eight days' absence from duty brings about automatic loss of lien on the post and nothing more need be done by the management to pass an order terminating the service and per force termination is automatic, bears no substance. The constitution bench specifically held that the right of the employer given under the standing Orders gets effected by statutory operation. In Robert D' Souza's case (supra) in para 7, this court rejected the contention that on expiry of leave the termination of service is automatic and nothing further could be done. It was further held that striking of the name from the rolls for unauthorised absence from duty amounted to termination of service and absence from duty for 8 consequitive days amounts to misconduct and termination of service on such grounds without complying with minimum prin- ciples of natural justice would not be justified. In Shambhunath's case three Judges bench held that striking of the name of the workman for absence of leave itself amounted to retrenchment. In H.D. Singh v. Reserve Bank of India & Ors. (supra), this court held that striking of the name from the rolls amounts to an arbitrary action. In State Bank of India v. Workmen of State Bank of India and Anr.[1991] 1 SCC 13, a two judge bench of this court to which one of us, K.R.S.,J. was a member was to consider the effect of discharge on one month's notice or pay in lieu thereof. It was held that it was not a discharge simplicitor or a simple termination of service but one camouflaged for serious misconduct. This court lifted the veil and looked beyond the apparent tenor of the order and its effect. It was held that the action was not valid in law.

The principle question is whether the impugned action is violative of principles of natural justice. In A.K. Kriapak and Ors. v. Union of India & Ors., [1969] 2 SCC 262 a Constitution bench of this court held that the distinction between quasi judicial and administrative order has gradually become thin. Now it is totally clipsed and obliterated. The aim of the rule of the natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in Col. J.N. Sinha v. Union of India & Anr. [1971] 1 SCR 791. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of natural justice necessary implication from specific provisions in the Act like Ss.25F; 25FF; 25FFF; etc, the need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to a service of such temporary workmen to meet such exigencies and as soon as the work or service are completed, the need to dispense with the services may arise. In that situation, on compliance of the provisions of s. 25F resort could be had to retrench the employees in conformity therewith particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors. [1978] 2 SCR 272 at 308F the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non- pecuniary damages. In its comprehensive connotion every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In State of Orissa v. Dr. (Miss) Binapani Dei & Ors., this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

In State of West Bengal v. Anwar Ali Sarkar [1952] SCR 289, per majority, a seven Judge bench held that the rule of procedure laid down by law comes as much within the purview of Art. 14 of the Constitution as any rule of substantive law. In Maneka Gandhi v. Union of India,. [1978] 2 SCR 62 1, another bench of seven judges held that the substantive and procedural laws and action taken under

them will have to pass the test under Art, 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to he reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

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 Art. 14.

and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 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 enquiry 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 enquiry and not to administrative enquiry. It must logically apply to both. 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. Art. 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 defence. Art. 14 has 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 Art. 14 and the procedure prescribed by law must be just, fair and reasonable.

In Delhi Transport Corpn. v. D. T. C. Mazdoor Congress and Ors, [1991] Suppl. 1 SCC 600 this court held that right to public employment and its concomitant right to livelihood received protective umbrella under the can copy of Arts. 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just. fair and reasonable procedure prescribed under the provisions of the constitution and the rules made under the provisions of the constitution and the rules made under proviso to Art. 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III

and IV of the Constitution. Art. 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Arts. 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice is an integral part of the Guarantee of equality assured by Art. 14. Any law made or action taken by an employer must be fair,just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of' natural justice. Arts. 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end result.

It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In D. 7. C. v. D. T.C. Mazdoor Congress and Ors. (supra) the constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Art. 14. The order terminating the service of the employees was set aside. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13 (2) (iv). Otherwise it would become arbitrary. unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice. This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accord- ingly. The parties would bear their own costs.

N.P.V. Appeal allowed.