Dr. (Mrs.) Chanchal Goyal vs State Of Rajasthan on 18 February, 2003

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Bench: Shivaraj V. Patil, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  7744 of 1997

PETITIONER:
Dr. (Mrs.) Chanchal Goyal

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 18/02/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT J.

The only point involved in this appeal is whether the appellant's termination from service is in order. Factual scenario which is almost undisputed is as follows:-

> The appellant was appointed by the Local Self- Government Department, Government of Rajasthan by order of appointment dated 27.11.1974, and posted as Lady Doctor under the Municipal Council, Ganganagar. There was a stipulation in the order of appointment that she was being posted purely on temporary basis for the period of six months or till the candidate selected by the Rajasthan Public Service Commission (hereinafter referred to as 'the Service Commission') is available, whichever is earlier. The working period of the appellant continued to be extended. The appointment was made in exercise of powers conferred under Section 308 of the

Rajasthan Municipalities Act, 1959 (in short 'the Act) read with Rules 26 and 27 of the Rajasthan Municipal Service Rules, 1963 (in short 'the Rules'). Though the appellant was selected by the Service Commission in October 1976 and August 1982 she did not join pursuant to such selection and continued on the basis of the orders of extension issued by the Local Self-Government Department of the Government. On 1.10.1988 appellant's services were terminated on the ground that the candidate selected by the Service Commission was available. Challenging such dismissal, appellant filed a writ petition bearing no. 3739 of 1988 before the Rajasthan High Court. Interim order of stay was passed on 12.10.1988 by the High Court with the direction that the appellant was not to be relieved from her post if she was not already relieved. Subsequently the interim order was made absolute by order dated 21.3.1989. By judgment dated 5.3.1993, learned Single Judge held that termination of appellant's services was illegal since order was passed ignoring of the fact that she had put in 14 years of service. The authorities were directed to adjudge her suitability within a period of one month and regularize her services with all benefits available to a substantively appointed member of the service. The State of Rajasthan filed appeal before the Division Bench of the Rajasthan High Court. In terms of interim orders, the appellant was allowed to continue in the service. But by the impugned judgment dated 11.4.1997, it was held by the Division Bench that the appellant continued merely as a temporary employee on the basis of appointment made under Rule 27 as she had not been selected by the Service Commission in accordance with the Rules. She had no right to hold the post. As noted supra the judgment is under challenge in this appeal.

Learned counsel for the appellant submitted that by now she had put in 28 years of service; 14 years by the time the order of termination was passed and 14 years on the basis of interim directions given by the High Court and this Court. Though her appointment initially was conditional, in view of the long period of service rendered by her, it had assumed permanency and learned Single Judge was justified directing regularization of appointment on a substantial basis. The Division Bench overlooked the salient features and held that the temporary appointment originally made continued to hold field. Reliance was placed on Director, Institute of Management Development, U.P. vs. Pushpa Srivastava (Smt.) (1992 [4] SCC 33), Ashwani Kumar & Ors. vs. State of Bihar & Ors. (JT 1997 [1] SC 243), Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch vs. Union of India and Ors. (1988 [1] SCC

122), Narender Chadha and Ors. vs. Union of India and Ors.

(1986 [2] SCC 157), State of Haryana and Anr. vs. Ram Diya (1990 [2] SCR 431), State of U.P. and Ors. vs. Dr. Deep Narain Tripathi and Ors. (1996 [8] SCC 454) to substantiate the plea. It was contended that in all these cases this Court took note of the long period of service rendered and the consequences and the benefits available to the concerned employee who had rendered such service without any blemish. It was also submitted that the principles of legitimate expectation are squarely

applicable.

Residually it was submitted that the appellant has been given the privileges available under the Gratuity and Pension Fund Benefit Schemes available under Rajasthan Municipal Services (Pension) Rules, 1989 (in short 'Pension Rules'). She has applied for voluntary retirement nearly two years back and no final decision has been taken. These benefits cannot be denied to her.

Learned counsel for the respondent on the other hand submitted that the appointment admittedly was on temporary basis with a clear condition that if a candidate selected by the Service Commission was available then even before the expiry of the period indicated, service would be terminated. Appellant cannot take advantage of the fortuitous circumstance that she continued for 14 years. She has, for reasons best known to her, not joined when she was selected twice; once in 1976 and again in 1982 by the Service Commission. Merely because she has continued for a long time, that has not crystalised into any enforceable right. She cannot claim lien over the post.

Before we advert to the legal issues, it is necessary to take note of Rules which undisputedly are applicable. Part VI of the Rules relates to Appointment, Probation and Confirmation. Power of appointments is indicated in Rule

26. Rule 27 deals with temporary or officiating appointments. It reads as follows:

> "Temporary or officiating appointments (1) [A vacancy in the service may be temporarily filled] by the Appointing Authority by appointing thereto in an officiating capacity an officer whose name is included in the list prepared under Rule 21 or in the lists under Rule 25:
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> Provided that till the preparation of the first list or in case the list is exhausted, a vacant post may be filled by the Appointing Authority by appointing thereto a [person] eligible for appointment to the post by promotion or by appointing thereto temporarily a person eligible for appointment by direct recruitment to the service under the provision of these Rules;
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> [Provided further that if all the officers in the grade or category from which appointment by promotion can be made under these rules, have already been promoted and no Officer is available from that grade or category the appointing authority may fill such vacancy by promotion from the grade or category next below such grade.] (2) No appointment made under sub-rule (1) shall be continued beyond a period of [one year] without referring it to the Commission for their concurrence and shall be terminated immediately on their refusal to concur."

Rule 29 and 31 deal with Probation and Confirmation respectively. As the initial order of appointment dated 27.11.1974 shows appellant was appointed in terms of Rules 26 and 27. It was clearly indicated that the appointment was made on a temporary basis with further condition that if candidate selected by the Service Commission is available, the employment was to come to end

automatically. Sub-rule (2) of Rule 27 is of considerable importance. It specifically lays down no appointment made under sub-rule (1) shall be continued beyond a period of one year without referring to the Commission for their concurrence and shall be terminated immediately on their refusal to concur. Learned Single Judge was swayed by the fact that for a longer period the concurrence was not sought for from the Commission and held that the inaction gave an undefeatable right to the appellant. The view was rightly set at naught by the Division Bench. The nature of employment and the authority with whose concurrence the continuation could be made are clearly spelt out in sub-rule (2) of Rule 27. There is no scope for taking a view that there is automatic extension once the period of one year is over in case reference was not made to the Commission. The appointment to the post of Lady Doctor in the Municipal Council is required to be made by selection through the medium of the Service Commission. That undisputedly has not been done.

There is no scope of regularization unless the appointment was on regular basis. Considerable emphasis has been laid down by the appellant to the position that even for temporary appointment there was a selection. That is really of no consequence. Another plea of the appellant needs to be noted. With reference to the extension granted it was contended that a presumption of the Service Commission's concurrence can be drawn, when extensions were granted from time to time. This plea is without any substance. As noted above, there is no scope for drawing a presumption about such concurrence in terms of sub-rule (2) of Rule 27. After one year, currency of appointment is lost. The extension orders operated only during the period of effectiveness.

The decisions relied upon by the learned counsel for the appellant were rendered in different factual background. A decision is an authority for what it decides and not for what could be inferred from the conclusion.

Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. It is true that an ad-hoc appointee cannot be replaced by another ad-hoc appointee; only a legally selected candidate can replace the ad-hoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available.

In fact, a candidate selected by the Service Commission was to replace the appellant, even if it is accepted as contended by the learned counsel for the appellant that the selected candidate did not join. That is really of no assistance to the appellant. The fact remains that a person has been selected and the Service Commission has drawn up a list of selected candidates. If the person, who was to replace the appellant, did not join for some reason, obviously another selected person can be posted. Non-joining of the selected candidate does not confer any right on the appellant. As the initial order dated 27.11.1974 shows, what is required is the availability of a candidate selected by the Service Commission, and not the joining of the selected candidate.

In J & K Public Service Commission and Ors. vs. Dr. Narinder Mohan and Ors.(1994 (2) SCC 630), it was, inter alia, observed that it cannot be laid down as general rules that in every category of ad-hoc appointment if the ad-hoc appointee continued for longer period, rules of recruitment should be

relaxed and the appointment by regularization be made. In the said case in paragraph 11 the position was summed up as under:

> "This Court in Dr. A.K. Jain v. Union of India (1987 Supp. SCC 497) gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before October 1, 1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 power is confided only to this Court. The ratio in Dr. P.P.C. Rawani v. Union of India (1992) 1 SCC 331 is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularize the ad hoc appointments had become final. When contempt petition was filed for non- implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India v. Dr. Gyan Prakash Singh 1994 Supp.
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> (1) SCC 306 this Court by a Bench of three Judges considered the effect of the order in A.K. Jain case (supra) and held that the doctors appointed on ad hoc basis and taken charge after October 1, 1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka 1991 Supp. (2) SCC 421, this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years' service. It is to be noted that the recruitment was only for clerical grade (Class-III post) and it is not a ratio under Article 141. In State of Haryana v. Piara Singh (1992) 4 SCC 118 this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee.

The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is

satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class-III or Class- IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularization be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

In Union of India and Ors. vs. Harish Balkrishna Mahajan (1997 [3] SCC 194), the position was again reiterated with reference to Dr. Narain's case (supra). Therefore, the challenge to the order of dismissal on the ground of long continuance as ad hoc/temporary employee is without substance.

What remains to be considered is the plea of legitimate expectation. The principle of 'legitimate expectation' is still at a stage of evolution as pointed out in De Smith Administrative Law (5th Edn. Para 8.038). The principle is at the root of the rule of law and requires regularity, predictability and certainty in governments' dealings with the public. Adverting to the basis of legitimate expectation its procedural and substantive aspects, Lord Steyn in Pierson v. Secretary of State for the Home Department (1997 (3) All ER 577, at p.606)(HL) goes back to Dicey's description of the rule of law in his "Introduction to the study of the Law of the Constitution" (10th Edn. 1968 p.203) as containing principles of enduring value in the work of a great jurist. Dicey said that the constitutional rights have roots in the common law. He said:

> "The 'rule of law', lastly, may be used as a formula for expressing the fact that with us, the law of constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the courts; that, in short, the principles of private law have with us been by the action of the courts and Parliament so extended as to determine the position of the Crown and its servants; thus the constitution is the result of the ordinary law of the land".

This, says Lord Steyn, is the pivot of Dicey's discussion of rights to personal freedom and to freedom of association and of public meeting and that it is clear that Dicey regards the rule of law as having both procedural and substantive effects. "The rule of law enforces minimum standards of fairness, both substantive and procedural". On the facts in Pierson, the majority held that the Secretary of State could not have maintained a higher tariff of sentence that recommended by the judiciary when admittedly no aggravating circumstances existed. The State could not also increase the tariff with retrospective effect.

The basic principles in this branch relating to 'legitimate expectation' were enunciated by Lord Diplock in Council of Civil Service Unions and Ors. v. Minister for the Civil Service (1985 AC 374 (408-409) (Commonly known as CCSU case). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by

depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Fraser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further, when he said that they had a legitimate expectation that they would continue to enjoy the benefits of the trade union membership, the interest in regard to which was protectable. An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to class of persons.

The principle of a substantive legitimate expectation, that is, expectation of favourable decision of one kind or another, has been accepted as part of the English Law in several cases. (De Smith, Administrative Law, 5th Ed.) (Para 13.030), (See also Wade, Administrative Laws, 7th Ed.) (pp. 418-419). According to Wade, the doctrine of substantive legitimate expectation has been "rejected" by the High Court of Australia in Attorney General for N.S.W. vs. Quin (1990) 93 ALL E.R. 1 (But see Teon's case referred to later) and that the principle was also rejected in Canada in Reference Re Canada Assistance Plan (1991) 83 DLR (4th 297, but favoured in Ireland: Canon vs. Minister for the Marine 1991(1) I.R. 82. The European Court goes further and permits the Court to apply proportionality and go into the balancing of legitimate expectation and the Public interest.

Even so, it has been held under English law that the decision maker's freedom to change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation. Observations in earlier cases project a more inflexible rule than is in vogue presently. In R. v. IRC, ex p Preston (1985 AC 835) the House of Lords rejected the plea that the altered policy relating to parole for certain categories of prisoners required prior consultation with the prisoner, Lord Scarman observed:

> "But what was their legitimate expectation. Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case be examined individually in the light of whatever policy the Secretary of State sees fit to adopt provided always that the adopted policy is a lawful exercise of the discretion conferred upon him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by statute upon the minister can in some cases by restricted so as to hamper or even to prevent changes of policy."

To a like effect are the observations of Lord Diplock in Hughes vs. Department of Health and Social Security (HL) 1985 AC 776 (788):

> "Administrative policies may change with changing circumstances, including changes in the political complexion of governments. The liberty to make such changes is something that is inherent in our constitutional form of government."

(See in this connection Mr. Detan's article "Why Administrators should be bound by their policies" (Vol. 17) 1997 Oxford Journal of Legal Studies, p. 23). But today the rigidity of the above decisions appears to have been somewhat relaxed to the extent of application of Wednesbury rule, whenever there is a change in policy and we shall be referring to those aspects presently.

Before we do so, we shall refer to some of the important decisions of this Court to find out the extent to which the principle of substantive legitimate expectation is accepted in our country. In Navjyoti Co-op. Group Housing Society vs. Union of India (1992 (4) SCC 477), the principle of procedural fairness was applied. In that case the seniority as per the existence list of co-operative housing societies for allotment of land was altered by subsequent decision. The previous policy was that the seniority amongst housing societies in regard to allotment of land was to be based on the date of registration of the society with the Registrar. But on 20.1.1990, the policy was changed by reckoning seniority as based upon the date of approval of the final list by the Registrar. This altered the existing seniority of the societies for allotment of land. This Court held that the societies were entitled to a 'legitimate expectation' that the past consistent practice in the matter of allotment will be followed even if there was no right in private law for such allotment. The authority was not entitled to defeat the legitimate expectation of the societies as per the previous seniority list without some overriding reason of public policy as to justify change in the criterion. No such overriding public interest was shown. According to the principle of 'legitimate expectation', if the authority proposed to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter. Reference was made to Halsbury's Laws of England (p.151, Vol.1 (1) (4th Ed. re-issue) and to the CCSU case. It was held that the doctrine imposed, in essence, a duty on public authority to act fairly by taking into consideration all relevant factors, relating to such legitimate expectation. Within the contours of fair dealing, the reasonable opportunity to make representation against change of policy came in.

The next case in which the principle of 'legitimate expectation' was considered is the case in Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries, (1993 (1) SCC 71). There the Food Corporation of India invited tenders for sale of stocks of damaged food grains and the respondent's bid was the highest. All tenderers were invited for negotiation, but the respondent did not raise his bid during negotiation while others did. The respondent filed a writ petition claiming that it had a legitimate expectation of acceptance of its bid, which was the highest. The High Court allowed the writ petition. Reversing the judgment, this Court referred to CCSU case and to R. v. IRC ex p Preston (1985 AC 835). It was held that though the respondent's bid was the highest, still it had no right to have it accepted. No doubt, its tender could not be arbitrarily rejected, but if the Corporation reasonably felt that the amount offered by the respondent was inadequate as per the factors operating in the commercial field, the non- acceptance of bid could not be faulted. The procedure of

negotiation itself involved the giving due weight to the legitimate expectation of the highest bidder and this was sufficient.

This Court considered the question elaborately in Union of India and Ors. vs. Hindustan Development Corporation and Ors. (1993 (3) SCC 499). There tenders were called for supply of cast-steel bogies to the railways. The three big manufacturers quoted less than the smaller manufacturers. The Railways then adopted a dual pricing policy giving counter offers at a lower rate to the bigger manufacturers who allegedly formed a cartel and a higher offer to others so as to enable a healthy competition. This was challenged by the three big manufacturers complaining that they were also entitled to a higher rate and a large number of bogies. This Court held that the change into a dual pricing policy was not vitiated and was based on 'rational and reasonable' grounds. In that context, reference was made to Halsbury's Laws of England (4th Ed.) (Vol.1 (I) p.151), Schmidt vs. Secretary to State for Home Affairs (1969 (2) Ch 149) which required an opportunity to be given to an alien if the leave given to him to stay in UK was being revoked before expiry of the time and to Attorney-General of Hong Kong. vs. Ng Yuen Shiu (1983 (2) AC 629) which required the Government of Hong Kong to honour its undertaking to treat each deportation case on its merits, and CCSU's case (supra) which related to alteration of conditions relating to membership of trade unions and the need to consult the unions in case of change of policy as was the practice in the past, and to Food Corporation of India's case (supra) and Navjyoti Co-op. Group Housing Society's case (supra). It was then observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish to desire or hope; nor was it a claim or demand based on a right. A mere disappointment would not given rise to legal consequence. The position was indicated as follows:

> "The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Such expectation should be justifiably legitimate and protectable."

After quoting Wade/Administrative Law (6th Ed.) (p.424,

522), reference was also made to the judgment of the Australian High Court in Attorney General for New South Wales vs. Quin (1990) 64 Aust. LJR 327) in which the principle itself, according to Wade, did not find acceptance. In that case a Stipendiary Magistrate incharge of a Court of Petty Sessions under the old court system was refused appointment to the system of local courts which replaced the previous system of Petty Sessions Courts. In 1987, the Attorney General who was hitherto recommending former magistrates on the ground of 'fitness' for appointment to the new local courts, deviated from that policy and decided to go by assessment of merit of the competing applicants. The Court of Appeal had directed that the case of Mr. Quin must be considered separately and not in competition with other applicants, but it was reversed by the majority of the High Court of Australia (Mason, CJ, Brennan & Dawson, JJ.) (Deans and Toobey, JJ dissenting). Mason, CJ held that the Court could not fetter the executive discretion to adopt a different policy which was better calculated to serve the administration of justice and make it more effective. The grant of substantive relief in such a case would effectively prevent the executive from giving effect to the new policy which it wished to pursue in relation to the appointment of magistrates. Brennan, J.

observed very clearly that the notion of legitimate expectation (falling short of a legal right) was too nebulous to form a basis for invalidating the exercise of power. He said that such a principle would "set the courts adrift on a featureless sea of pragmatism." Dawson, J. held that the contention of the respondent exceeded the bound of procedural fairness and intruded upon the freedom of the executive. In Hindustan Development Corporation's case (supra) R. vs. Secretary of State for the Home Department ex parte Ruddock (1987 2 All E.R. 518) and Findlay vs. Secretary of State for the Home Department (1984) 3 All E.R. 801) and Breen vs. Amalgamated Engineering Union, (1971) 1 All. E.R. 1148 were considered. It was accepted that the principle of legitimate expectation gave the applicant sufficient locus standi to seek judicial review and that the doctrine was confined mostly to a right to fair hearing before a decision which resulted in negativing a promise or withdrawing an undertaking, was taken. It did not involve any crystallized right. The protection of such legitimate expectation did not require the fulfillment of the expectation where an overriding public interest required otherwise. However, the burden lay on the decision maker to show such an overriding public interest. A case of substantive legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The Court could interfere only if the decision taken by the authority was arbitrary, unreasonable or not taken in public interest. If it is established that a legitimate expectation has been improperly denied on the application of the above principles, the question of giving opportunity can arise if failure of justice is shown. The Court must follow an objective method by which the decision-making authority is given the full range of choice which the legislature is presumed to have intended. If the decision is reached fairly and objectively, it cannot be interfered with on the ground of procedural fairness. An example was given that if a renewal was given to an existing licence holder, a new applicant cannot claim an opportunity based on natural justice. On facts, it was held that legitimate expectation was denied on the basis of reasonable considerations.

The next case in which the question was considered is Madras city Wine Merchants' Association vs. State of Tamil Nadu, 1994 (5) SCC 509. In that case the rules relating to renewal of liquor licences were statutorily altered by repealing existing rules. It was held that the repeal being the result of a change in the policy by legislation, the principle of non-arbitrariness was not invocable.

In M.P. Oil Extraction vs. State of M.P. (1997 (7) SCC

592) the question was again considered. In that case, it was held that the State's policy to extend renewal of an agreement to selected industries which came to be located in Madhya Pradesh on invitation of State, as against other local industries was not arbitrary and the said selected industries had a legitimate expectation of renewal under renewal claims which should be given effect to according to past practice unless there was any special reasons not to adhere to the practice. It was clearly held that the principle of substantive legitimate expectation was accepted by the Court earlier. Reference was made to Food Corporation's case (supra), Navjyoti Co-op. Group Housing Society's case (supra) and to Hindustan Development Corporation's case (supra).

Lastly we come to the three judge judgment in National Building Construction Corporation vs. S. Raghunathan & Others. (1998 (7) SCC 66). This case has more relevance to the present case, as it was also a service matter. The respondents were appointed in CPWD and they went on deputation to

the NBCC in Iraq and they opted to draw, while on deputation, their grade pay in CPWD plus deputation allowance. Besides that, the NBCC granted them Foreign Allowance at 125% of the basic pay. Meanwhile their Basic Pay in CPWD was revised w.e.f. 1.1.1986 on the recommendation of the 4th Pay Commission. They contended that the abovesaid increase of 125% should be given by NBCC on their revised scales. This was not accepted by NBCC by orders dated 15.10.1990. The contention of the respondents based on legitimate expectation was rejected in view of the peculiar conditions under which NBCC was working in Iraq. It was observed that the doctrine of 'legitimate expectation' had both substantive and procedural aspects. This Court laid down a clear principle that claims on legitimate expectation required reliance on representation and resultant detriment in the same way as claims based on promissory estoppel. The principle was developed in the context of 'reasonableness' and in the context of 'natural justice'. Reference was made to IRC exp. Preston's case (supra); Food Corporation's case (supra); Hindustan Development Corporation's case (supra); the Australian Case in Quin (1990) 64 Aust. IJR 327; M.P. Oil Extraction's case (supra), CCSU's case (supra) and Navjyoti's case (supra).

On the facts of the case delineated above, the principle of legitimate expectation has no application. It has not been shown as to how any act was done by the authorities which created an impression that the conditions attached in the original appointment order were waived. Mere continuance does not imply such waiver. No legitimate expectation can be founded on such unfounded impressions. It was not even indicated as to who, if any and with what authority created such impression. No waiver which would be against requisite compliances can be countenanced. Whether an expectation exists is, self-evidently, a question of fact. Clear statutory words override any expectation, however, founded. (See Regina v. Director of Public Prosecutions, Ex parte Kebilene and Ors. (1999) 3 WLR 972 (H.L.).

The inevitable conclusion is that Division Bench judgment is on terra firma and needs no interference. However, one factor needs to be noted before we part with the case. The appellant has already put in 28 years of service, has participated in the provident fund, pension and gratuity schemes, and additionally she has applied for voluntary retirement. We hope that the Government would appropriately consider the prayers made by her for extending the benefits of the schemes and accepting the prayer for voluntary retirement in the proper perspective early, uninfluenced by the dismissal of the appeal.

Appeal dismissed. Costs made easy.