(14) As, in our opinion, the criteria laid down in Rule 8, is for determining the suitability of a candidate for Haryana Civil Service (Judicial Branch), there is no obligation upon the respondents to recruit the Scheduled Caste candidates by relaxing the standard for the purpose laid down in the Rule. There is, thus, no force in the fourth submission made on behalf of the petitioners.

(15) As we do not find any substance in any of the four submissions made on behalf of the petitioners, the petitions fail and are dismissed.

Costs on parties.

S.C.K.

Before D. V. Sehgal, J.

G. S. CHAWLA,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2302 of 1986.

July 14, 1987.

Constitution of India, 1950—Art. 14—Haryana State Cooperative Supply and Marketing Federation (Common Cadre) Rules, 1969—Rule 2.10—Permanent employee of HAFED—Statutory rule providing for removal of such employee without inquiry—Such Power—Whether arbitrary—Rule granting such Power—Validity of such rule.

Held, that the power to remove an employee without holding an inquiry is arbitrary and unguided power is vested thereby in the appointing authority to choose to hold an inquiry in a particular case or to terminate the services of an employee by giving him one month's notice or pay in lieu thereof. There is no escape from the conclusion that rule 2.10 vesting power in the appointing authority to terminate the services of an employee who has been confirmed or has been made regular after successful completion of the probation particularly when such termination is actuated by the allegation of misconduct against him is violative of the rule of equality enshrined in the Constitution of India.

(Para 8)

PETITION Under Article 226/227 of the Constitution of India praying that :—

(*i*) *Rule* 2.10 *of Common Cadre Rules be declared* ultra-vires *Articles* 14 *and* 16 *of the Constitution of India.*

(*ii*) *Resolution of the Board Annexure P/9 terminating the service and the order of termination issued by the HAFED in pursuance thereof be quashed;*

(*iii*) *any other relief which this Hon'ble Court may deem fit under the circumstances of the case be issued;*

(*iv*) *the petitioner has not yet been served with the order of termination nor he has handed over the charge;*

(*v*) *issuance of advance notices to the respondents be dispensed with as the stay is involved in this petition.*

(*vi*) *filing of certified copies of Annexures P/1 to P/12 be dispensed with;*

(*vii*) *Costs of the petition be awarded to the petitioner.*

Further praying that during the pendency of the writ petition, operation of the termination order made by the respondents may kindly be stayed.

Kuldip Singh ,Senior Advocate with R. S. Mongia Advocate, *for the Petitioner.*

Anand Swarup Senior Advocate with Amar Singh Walia Advocate and Ajay Tiwari, Advocate, *for the Respondents.*

JUDGMENT

D. V. Sehgal, J.

(1) This judgment will dispose of C.W.P. Nos. 2302 and 2266 of 1986 as the salient facts as also the question of law arising in both of them are the same.

(2) G. S. Chawla petitioner in C.W.P. No. 2302 of 1986 was appointed as Marketing Development Officer in the Haryana State Co-operative Supply and Marketing Federation Limited (hereinafter referred to as 'the HAFED'), respondent No. 2, in the year 1975. He

successfully completed his period of probation and,—*vide* order dated 18th June, 1977 his appointment was made regular. Later he was appointed Manager (Marketing) in the year 1980 and then as Manager (Commercial) in August, 1985. He was working as Manager (Recovery) when the impugned order terminating his services in pursuance of resolution dated 1st May, 1986 Annexure P. 9 was passed.

(3) G. S. Chawla has approached this Court by filing the present writ petition for the third time. The Additional Registrar (Administration), Co-operative Societies, Haryana,—*vide* letter dated 15th May, 1981 Annexure P. 2 had directed the Managing Director of respondent No. 2 to place the petitioner under suspension as some serious irregularities committed by him had come to light regarding the appointment of clearing agents for the export of rice. This order was challenged by him through C.W.P. No. 557 of 1982. The learned counsel appearing on behalf of the State of Haryana made a statement before the Division Bench on May 27, 1982, to the effect that the letter Annexure P. 2 had been issued to respondent No. 2 in an advisory capacity and it shall be for respondent No. 2 to take action thereon on its own. In view of this statement, the writ petition was not pressed and the same was dismissed as withdrawn. The petitioner thus continued in service. Later, however,—*vide* letter dated 3rd March, 1986 Annexure P. 4 the Additional Registrar, Co-operative Societies, Haryana, required the Managing Director of respondent No. 2 to place G. S. Chawla under suspension as Urd and Moong Dal purchased by him in 1980 from Akola for Dal Mill of respondent No. 2 at Ambala was of very inferior qualify and respondent No. 2 had suffered a huge financial loss. Acting on the letter Annexure P. 4 the Managing Director of respondent No. 2 passed an order dated 3rd March, 1986 Annexure P. 5 placing G. S. Chawla under suspension. This order was again challenged by him by filing C.W.P. No. 1253 of 1986. The learned counsel appearing on behalf of respondent No. 2 in that writ petition made a statement before the Division Bench that the order Annexure P. 5 had since been withdrawn and, therefore, the writ petition had become infructuous. The Division Bench,—
—*vide* order dated 31st March, 1986 Annexure P. 6, however, imposed costs of Rs. 500 on respondents Nos. 1 and 2 therein to be borne by them in equal shares taking into consideration the facts of the case. The matter regarding irregularities in the purchase of Urd and Moong dal from Akola by the petitioner was placed through an agenda

Annexure P. 7 for the consideration of the Board of Director of respondent No. 2 and the resolution Annexure P. 9 was passed on 1st May, 1986 wherein it is mentioned that the said matter had been discussed in detail. The Board of Directors noted with concern the huge loss suffered by respondent No. 2 in the deal. It also expressed its concern over the loss of the file on the subject in the Marketing Branch. After detailed deliberations it was resolved that the services of Mr. G. S. Chawla, Manager (Marketing) and Desh Bandhu Mehta, Manager, HAFED Dal Mill, Ambala, should be terminated with immediate effect as no longer required. It was also resolved that proceedings for the recovery of loss should be initiated against these officers under the Haryana Co-operative Societies Act, 1984 (for short 'the Act'). An order terminating the services of the petitioner was issued in pursuance of the aforesaid resolution which according to him was never served on him and he filed the present writ petition in this Court.

(4) Mr. Desh Bandhu Mehta petitioner in C.W.P. No. 2266 of 1986 joined the service of HAFED as a Steno-typist on 1st October, 1975. By climbing up the ladder of promotions he was appointed Manager 'C' Grade,—*vide* order dated 30th January, 1978 Annexure P. 1. He alleges that persons junior to him are working as Managers 'C' Grade. In respect of financial loss to the HAFED in the purchase of Urd and Moong Dal from Akola for the Dal Mill at Ambala, a preliminary enquiry was held into his conduct and he was *prima facie* held liable. Therefore, a chargesheet dated 2nd May, 1985 Annexure P. 2 was served on him. He made a representation Annexure P. 3 for the supply and inspection of the relevant record before he could submit reply to the charge sheet. However, without awaiting his reply the HAFED appointed an Inquiry Officer,—*vide* order dated 11th December, 1985 Annexure P. 4 for going into the charges contained in the chargesheet Annexure P. 2. After the appointment of the Inquiry Officer no further proceedings whatsoever were taken except that he was placed under suspension,—*vide* order dated 26th February, 1986 Annexure P . 5. *Vide* resolution dated 1st May, 1986 to which reference has already been made while detailing the facts of the case of Shri G. S. Chawla, it was resolved by the Board of Directors of the HAFED to terminate the services of this petitioner along with those of Shri G. S. Chawla. Consequently, the impugned order Annexure P. 6 terminating his services with immediate effect was passed. A cheque for the amount of Rs. 1448 as one month's salary in lieu of notice for the said period was also sent along with the said order.

(5) The case of both the petitioners is that their services are governed by the Common Cadre Rules, 1969 (for short 'the Rules') framed with the approval of the Registrar, Co-operative Societies in pursuance of the provisions of the Act which are therefore statutory in character. Their services have been terminated by taking resort to the provisions of rule 2.10 which for facility of reference is re-produced hereunder:—

"2.10: *Termination of Service*:

Subject to the overall controll of the Board, the service of any employee of the societies governed by these rules may be terminated by the Administrative Committee by giving him one month's notice or pay in lieu thereof, provided that—

(a) No employee shall be entitled to one month's notice or notice-pay unless and until he has been in the service continuously for a period of three months.

(b) No employee shall be entitled to the notice or pay in lieu thereof if he is removed from service on account of misconduct established on record."

(6) The petitioners submit that they were regular employees of the HAFED. The allegations of misconduct have been levelled against them and it is clear from the resolution of the Board of Directors dated 1st May, 1986 that because of the alleged misconduct their services have been terminated by taking resort to rule 2.10 *ibid.* They contend that the provisions of the said rule laying down that the services of an employee may be terminated by the Administrative Committee by giving him one month's notice or pay in lieu thereof is arbitrary and give the appointing authority unguided powers. Rule 2.13 of the Rules makes provision for disciplinary action against an employee. It provides for punishments which can be imposed on an employee for good and sufficient reasons. This includes the penalty for compulsory retirement or dismissal from service. The explanation to the said rule lays down that no penalty shall be imposed on an employee unless the charge or charges on which it is proposed to take disciplinary action against him have been communicated to him in writing and he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. The authority competent to impose the penalty may, if circumstances permit, hold an enquiry into the

charge or charges or cause such an enquiry to be held by an officer superior to the person against whom the action is proposed to be taken for the purposes of ascertaining the truth or otherwise of the charges. If it is decided to hold an enquiry the employee concerned shall be permitted to cross-examine the witnesses deposing against him and to cite witnesses on his own behalf and examine the relevant documents but shall not be entitled to engage a lawyer at the enquiry. The petitioners contend that the HAFED by taking resort to rule 2.10 has scuttled their right to defend themselves against charges of misconduct as laid down by rule 2.13 *ibid.*

(7) The petitions have been opposed by the HAFED. It has been contended that the writ petitions are not maintainable. It is further maintained that the State Government and the Registrar, Co-operative Societies, can issue instructions and directions under the Act and the Rules for the smooth functioning of the HAFED and therefore they are the overall incharge with regard to the working of the HAFED. The State Government can advise HAFED on any matter concerning it for its smooth functioning and as its principal financier but the final action on the advice of the Government is to be taken by the Board of Directors of the HAFED. The order terminating the services of the petitioner and the resolution dated 1st May, 1986 passed by the Board of Directors has been defended. It is maintained that the said resolution and the order have not been passed by way of punishment. The order has been passed in terms of the letter of appointment of the petitioner on the basis of reciprocal arrangement between the petitioner and the HAFED. The petitioners could also leave service by tendering one month's salary in lieu of notice. Condition No. 2 from the letter of appointment of Mr. G. S. Chawla has been reproduced in para 18 of the written statement to his writ petition. It is more or less reproduction of rule 2.10 *ibid.*. HAFED has denied that rule 2.10 is violative of the rule of equality enshrined in the Constitution.

(8) I have heard the learned counsel for the parties and have closely scrutinised their respective pleadings. I find that in the facts obtaining in these writ petitions the same must succeed. I had an occasion to deal with an analogous provision contained in rule 2.10 of the Rules governing the employees of the Punjab State Co-operative Supply and Marketing Federation Limited in *Kuldip Singh* v. *The Presiding Officer, Labour Court, Patiala, and others* (1),

(1) 1987(1) S.L.R. 112.

wherein I held that the power to remove an employee without holding enquiry is arbitrary. An unguided power is vested thereby in the appointing authority to choose to hold an enquiry in a particular case by taking resort to rule 2.13 or to terminate the services of the employee by banking upon rule 2.10 *ibid.* This was violative of the rule of equality enshrined in Article 14 of the Constitution.

(9) Although in view of my judgment in *Kuldip Singh's case* (supra), it is not necessary to dilate in greater detail on the point, I deem it proper to make reference to some of the authoritative pronouncements. In *West Bengal State Electricity Board and others* v. *Desh Bandhu Ghosh and others* (2), Regulation 34 framed by the West Bengal Electricity Board which provided that in case of a permanent employee his services may be terminated by serving three months' notice or by payment of salary for the corresponding period in lieu thereof came in for consideration. The final Court held that on the face of it the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers. The principles laid down in the *West Bengal Electricity Board's* case (supra) were reiterated by the Supreme Court in a recent judgment in *Central Inland Water Transport Corporation Limited and another* v. *Brojo Nath Ganquly and another* (3). Rule 9(i) framed by the Central Inland Water Transport Corporation Limited vesting in the Corporation the power to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu thereof came up for consideration, and their Lordships after discussing various precedents deduced the principles therefrom as under:—

> "The principle deducible from various precedents is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. For instance, the above principle will apply where the inequality of bargaining power is the result of

(2) A.I.R. 1985 S.C. 722.
(3) A.I.R. 1986 S.C. 1571.

the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. The types of contracts to which the principle formulated above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the Court. They are opposed to public policy and require to be adjudged void."

West Bengal Electricity Board's case was also followed by a learned Single Judge of this Court in *Labh Singh* v. *Food Corporation of India and others* (4), and Regulation 19(1) framed by the said Corporation which provided that the services of an employee who has been appointed on regular basis on any post in the Corporation and has satisfactorily completed his period of probation may be terminated by the competent authority on giving such employee 90 days' notice or pay in lieu thereof was declared violative of Article 14 of the Constitution. The L.P.A. against the judgment in *Labh Singh's* case (supra) was dismissed by a Division Bench of this Court in *Senior Regional Manager, Food Corporation of India, Sector* 17, *Chandigarh* v. *Labh Singh and others* (5). Thus, there is no escape from the conclusion that rule 2.10 vesting power in the appointing authority to terminate the services of an employee who has been confirmed or has been made regular after successful completion of the probation particularly when such termination is actuated by the allegations of misconduct against him is violative of the rule of equality enshrined in rule 14 of the Constitution.

(10) Mr. Anand Swarup, the learned Senior Advocate, appearing on behalf of the HAFED contended that HAFED is not proved to

(4) 1986 (2) S.L.R. 37.
(5) 1986 (2) S.L.R. 577.

be 'State' or an 'authority' within the meaning of Article 12 of the Constitution and, therefore, a writ could not be maintained against it. Mr. Kuldip Singh, the learned Senior Advocate, appearing for Mr. G. S. Chawla, petitioner disputed this assertion. He submitted that this objection had not been specifically taken by HAFED in its written statement. Had such an objection been taken, the petitioner would have supported his plea of the HAFED being a 'State' or an 'authority' by bringing on record material to the effect that it satisfies the ingredients laid down by the final Court for adjudging it as a 'State' or an 'authority', as envisaged by Article 12 of the Constitution. He also invited my attention to *K. N. Chopra* v. *Punjab State,* (6) wherein I have held that the Punjab State Co-operative Supply and Marketing Federation Ltd. is a 'State'. He submits that HAFED has the same attributes and in fact it came into existence on the formation of the State of Haryana by bifurcation of the MARKFED. He further submitted that the attack of the petitioners is mainly directed against the vires of rule 2.10 of the Rules which are statutory in character and, therefore, a writ for bringing into question the said rule or the consequences of its enforcement can be maintained.

(11) After considering the rival contentions of both the learned counsel on the above point, I find that the contention of the learned counsel for the petitioners must prevail. In *Bhupinder Singh and others* v. *State of Punjab and others* (7) a Full Bench of this Court has held that the Common Cadre Rules framed under the analogous provisions of the Punjab Co-operative Societies Act are statutory in character and the employees of the MARKFED are governed by the same. Any person affected adversely by their enforcement can invoke the writ jurisdiction of this Court under Article 226 of the Constitution. I have followed the principle thus laid down by the Full Bench in *Bhupinder Singh's* case (supra) in *Kuldip Singh's* case. I have, therefore, no doubt whatsoever in my mind that the writ petition is maintainable.

(12) As a result, both the writ petitions are allowed. The impugned resolution dated 1st May, 1986 passed by the Board of Directors of the HAFED resolving to terminate the services of the petitioners and subsequent individual orders terminating their services are quashed. Rule 2.10 of the Rules is held to be *ultra*

(6) I.L.R. (1987)2 Pb. & Hry. 41.

(7) 1985(3) S.L.R. 643.

vires Article 14 of the Constitution. The petitioners shall be reinstated in service forthwith with full back wages and if the HAFED so chooses it may take disciplinary proceedings against them by taking resort to rule 2.13 of the Rules. The respondents shall also pay costs of these writ petitions which are assessed at Rs. 500 in each case.

(13) It bears mention here that when C.W.P. No. 2302 of 1986 came up for motion hearing before the Division Bench on 27th May, 1986 the learned counsel for the HAFED made a statement that in case the writ petition is allowed and the order of termination is set aside, then payment of the entire amount of arrears of salary along with interest at the rate of 12 per cent per annum thereon shall be paid to the petitioner by respondent No. 2 within a week of the writ petition. Respondent No. 2 is required to abide by that undertaking.

S.C.K.

Before M. R. Agnihotri, J.

SUNDER SHAM KAPOOR AND OTHERS,—*Petitioners.*

versus

HON'BLE CHIEF JUSTICE, PUNJAB AND HARYANA HIGH COURT, CHANDIGARH AND OTHERS,—Respondents.

Civil Writ Petition No. 2363 of 1985

August 6, 1987.

Constitution of India, 1950—Articles 229, 231 and 309—Rule making power of the Chief Justice—Extent of that power—Rules involving financial implications—Approval of such rules—Requirement of publication of Rules—Date of publication—Whether enforcement of rules from such date.

Held, that the Chief Justice is the head of the judiciary in the State and in the matters of appointment of officers and servants of High Court it is the Chief Justice or his nominee who is the supreme authority. The Chief Justice has exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of the High