(9) For the reasons recorded above and in the peculiar facts and circumstances of this case, we hold that the petitioner is entitled to pay from the period when respondent No. 5 was appointed to the post of Science Teacher till such time he was actually appointed with all consequential benefits. It will be in the discretion of the State Government to take action against its erring officer (s) in accordance with law. The appeal is accordingly allowed with costs quantified at Rs. 3300/-.

J.S.T.

Before G. S. Singhvi and Iqbal Singh, JJ.

SWARAN SINGH,—*Appellant*

versus

P.S.E.B. PATIALA AND ANOTHER.—*Respondents*

L.P.A. No. 595 of 1994

10th February, 2000

Constitution of India, 1950—Art. 226—Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1970—Reg. 14 (ii)—Industrial Disputes Act, 1947—S. 25-F—Scope of interference under Art. 226 against awards of Labour Court—Long absence from duty—Termination of employee without complying with the provisions of Reg. 14(ii)—Labour Court holding termination as illegal and ordered reinstatement with continuity of service—Ld. Single Judge while quashing the award held that the charge on which the appellant's services were terminated proved to the hilt-Plea of retrenchment and misconduct untenable—Termination of services held ultra-vires Reg. 14(ii)—Order of learned Single Judge set aside—Award of Labour Court restored with modification that appellant entitled to 25% back wages from date of demand notice till joining—However, PSEB left free to hold enquiry in accordance with law.

Held, that instead of holding regular departmental enquiry in accordance with the procedure prescribed by Regulations 8 to 13 of the Regulations, the Superintending Engineer, Distribution Circle, Ludhiana had invoked the provisions of Regulation 14(ii) and terminated the appellant's service on the premise that it is not reasonably practicable to hold enquiry. This necessarily means that the concerned authority did not issue notice to the appellant for holding a departmental enquiry into the allegation of long absence from duty nor any enquiry was, in fact, held to prove that allegation and the

appellant was also not given opportunity to defend himself against the accusation of wilful absence from duty. Before the Labour Court also, no attempt was made on behalf of respondent No. 1 to justify the termination of the services of the appellant by stating that he has been punished on the basis of the findings recorded in a departmental enquiry held in accordance with the Regulations and the principles of natural justice. It was not even urged on behalf of respondent No. 1 that the Labour Court may itself hold an enquiry and give opportunity to the parties to adduce evidence in relation to the allegation that the appellant (workman) had absented from duty for more than one year. In view of this, we have no hesitation to hold that the learned Single Judge was not, at all, justified in holding that the charge on which the workman was retrenched was proved to the hilt or that his conduct was deplorable or blame-worthy and, therefore, the Labour Court should not have ordered his reinstatement. With respect, we are unable to agree with the learned Single Judge that in the name of dispensation of justice under Article 226 of the Constitution of India, the Court can ignore the basic para-meters laid down by the Supreme Court for issuance of a writ of certiorari. In our considered view, justice has to be done to both the parties in accordance with law and not according to particular notions entertained by the individuals.

(Para 15)

Further held, that the view taken by the learned Single Judge that the appellant's service had been terminated by way of retrenchment and he was guilty of grave misconduct are not only self-contradictory but is wholly untenable in view of the admitted fact that his services had been terminated under Regulation 14(ii) of the Regulations.

(Para 16)

Further held, that the Labour Court had rightly declared that the termination of the services of the appellant is *ultra vires* to Regulation 14(ii) and the learned Single Judge has gravely erred in interfering with the award passed by it. Order of the learned Single Judge is set aside and the award passed by Labour Court, Ludhiana, is restored subject to the modification that the appellant shall be entitled to only 25% back wages instead of full back wages for the period between 26th April, 1986 and the date he is being allowed to join duty.

(Para 28)

C.L. Sharma, Counsel, *for the petitioner.*

Deepak Sibal, Counsel, *for Respondent No. 1*

JUDGEMENT

G.S. Singhvi, J.

(1) This appeal is directed against the order dated 5th November, 1993 passed by the learned Single Judge by which he allowed C.W.P. No. 13437 of 1992 filed by respondent No. 1 and set aside the award dated 28th October, 1991 passed by Labour Court. Ludhiana for reinstatement of the appellant with continuity of service and back wages with effect from 27th April, 1986.

The Facts :

(2) The appellant joined service of the Punjab State Electricity Board (respondent No. 1) on 23rd February, 1977 as Assistant Lineman. He was promoted as Lineman with effect from 3rd October, 1978. On 4th February, 1984, he submitted an application for five days casual leave from 4th February, 1984 to 8th February, 1984. He did not report for duty on 9th February, 1984 or thereafter and the letter dated 16th March, 1984 sent by the Sub-Divisional Officer requiring him to join the duty was received undelivered. After about one year, a notice was got published by the competent authority of respondent No. 1 in 'The Tribune' dated 6th May, 1985 requiring the appellant to report for duty within 30 days. There is some controversy between the parties as to whether or not the appellant had presented himself before the Executive Engineer on 19th May, 1985, as alleged by him, in response to the said notice, but there is no dispute between them that by order No. 506/E.P.-1920, dated 12th December, 1985, the Superintending Engineer, Distribution Circle, Ludhiana by which he terminated the appellant's service under Regulation 14 read with Regulation 5 (iii) of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1970 (for short, 'the Regulations').

(3) The appellant challenged the termination of his service by raising as industrial dispute which the Government of Punjab referred to Labour Court, Ludhiana under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'). In his statement of claim, the appellant (described as workman in the proceedings before the Labour Court) aserted that the action taken by the employer was liable to be nullified because neither any notice was given to him in terms of Section 25-F of the Act nor any enquiry was held to prove the allegation of misconduct, namely, absence from duty. Respondent No. 1 (described as the employer in the proceedings before the Labour Court) resisted the claim of the workman by contending that he had abandoned the service with

effect from 4th February, 1984. It was also pleaded on behalf of the employer that the services of the workman had been terminated under Regulation 14(ii) of the Regulations because he failed to report for duty in spite of the notices issued by the concerned authorities.

(4) After considering the pleadings of the parties, the Labour Court framed the following issues :

1. Whether the workman had abandoned the service on 4th February, 1984 ?

2. Whether termination of the services of the workman was justified and in order ? If not, what relief ?

(5) On the first issue, the Labour Court held that the plea of abandonment of employment raised by the employer was self-contradictory and untenable because a positive order terminating the service of the workman had been passed under the Punishment and Appeal Regulations. On the second issue, it held that the action taken by the employer was *ultra vires* to Regulation 14(ii) of the Regulations because there did not exist any reasonable ground for dispensing with the enquiry. On the basis of these findings, the Labour Court declared the termination of the service of the workman as illegal and ordered his reinstatement with continuity of service but denied him the benefit of wages for the period from the date of termination of service, i.e., 4th February, 1984 to the date of demand notice, i.e., 26th April, 1986.

(6) Respondent No. 1 challenged the award by filing C.W.P. No. 13437 of 1992 *inter alia* on the ground that the Labour Court has erred in rejecting its plea that the workman had abandoned the service. It also attacked the finding recorded by the Labour Court on issue No. 2 by contending that the notices issued to the workman requiring him to report for duty should have been treated as sufficient compliance of the principles of natural justice.

(7) The learned Single Judge quashed the award passed by the Labour Court by holding that the charge on which the workman was retrenched from service was proved to the hilt and he cannot complain of the violation of the principles of natural justice. The learned Single Judge further held that the conduct of the workman was deplorable and blame-worthy and, therefore, the Labour Court ought not to have foisted him upon the employer.

(8) Shri C.L. Sharma assailed the impugned order by arguing that the reasons assigned by the learned Single Judge for quashing the award are wholly irrelevant and extraneous to the issues raised by

the parties before the Labour Court. He pointed out that the employer, i.e., respondent No. 1 had neither pleaded before the Labour Court nor any evidence was produced on its behalf to show that the service of the workman (appellant herein) had been terminated by way of retrenchment and yet the learned Single Judge has held that the charge on which the service of the appellant was retrenched has been proved. Shri Sharma argued that the impugned order deserves to be set aside because while quashing the award of the Labour Court, the learned Single Judge has failed to keep in view the para-meters within which certiorari jurisdiction of the High Court can be exercised. Learned counsel laid emphasis on the fact that without recording a finding that the award passed by the Labour Court suffers from an error of law apparent on the face of it, the learned Single Judge could not have interfered with the same. Still further, he submitted that the findings recorded by the Labour Court on both the issues, which arose out of pleadings of the parties, are correct and justified and, therefore, the award passed by it should be restored.

(9) Shri Deepak Sibal, counsel for respondent No. 1 made half-hearted attempt to support the order of the learned Single Judge by arguing that he had rightly treated it to be a case of retrenchment because the workman had abstained from duty for a period of almost 2 years. Learned counsel submitted that failure of the appellant to report for duty after the expiry of the period specified in his application for casual leave and his continued absence from duty could be legitimately taken into consideration for drawing an inference that he had voluntarily abandoned the service and, therefore, notwithstanding the fact that the Superintending Engineer had passed order terminating his service under Regulation 14(ii) of the Regulations, the view taken by the learned Single Judge that the appellant was not entitled to be reinstated in service should be approved.

(10) We have thoughtfully considered the respective submissions. It is trite to say that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals or an error of law apparent on the face of the record. A writ can also be issued where in exercise of jurisdiction conferred upon it, the Court or Tribunal acts illegally or improperly, i.e., if it decides a question without giving an opportunity of hearing to the affected party or where the procedure adopted in dealing with the dispute is contrary to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellant Court. This implies that the finding of fact reached by the

inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned except when it suffers from an error of law apparent on the face of it. What is the meaning of expression "error of law apparent on the face of the record ?" The Courts have not given any fixed meaning to this expression in the context of the findings of fact recorded by the inferior Court or Tribunal but, broadly speaking, a writ of certiorari can be issued for correcting a finding of fact if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroenously admitted in admissible evidence which has influenced its finding. Similarly, if a finding of fact is based on no evidence then it would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with these category of cases, it has to be kept in mind that a finding of fact recorded by the inferior Court or Tribunal cannot be challenged on the ground that relevant and material evidence adduced before the inferior Court or Tribunal was insufficient or inadequate to sustain the impugned finding. Likewise, mere possibility of the High Court, on reappreciation of evidence, coming to a different conclusion than the one reached by the inferior Court or Tribunal cannot be treated as an error of law apparent on the face of the record.

(11) In the light of the above, it is to be decided whether the learned Single Judge was justified in quashing the award passed by the Labour Court. For deciding this question, it will be appropriate to notice the relevant findings recorded by the Labour Court and the learned Single Judge.

"Findings recorded by the Labour Court

Issue No. 1 :

As far this issue, the plea of the respondent that the workman had abandoned the employment seems to be untenable and even contradictory to the main case of the respondent. The management has passed a specific order dated 12th December, 1985, copy Ex. M/6, wherein the services of the workman have been terminated. So, it can hardly be argued with any justification that the workman had abondoned the employment. In that case, there was no question of passing any order of termination. Even a perusal of this termination order Ex. M/6 would show that it was no where stated that the workman had abondoned the employment. All that has been said in the said order is that the workman has been continuously absent since 4th February, 1984. *Obviously, in view of this order of the management itself it cannot be held that the workman*

had abandoned employment. This issue is decided against the respondent.

Issue No. 2 :

As far this issue, it may be noted in the first place that the management has taken two contrary stands—the one that the workman abandoned the employment and the second that the workman had absented himself from duty and his services were terminated as per copy of order Ex. M/6. As discussed under issue No. 1 the stand of the management that the workman had abandoned employment actually seems to be unfounded and the plea taken as an after thought. That plea has already been negatived under issue No. 1. Coming to the question of termination, the stand of the management is that the workman absented from service with effect from 4th February, 1984 and his services had to be terminated."

(12) It was pointed out by very strongly by Shri Sood that the rules and regulations did not empower a punishing authority to give a retrospective effect to the order of termination. Shri Brar appearing for the management when questioned on this point could not refer to any specific regulation which entitled the punishing authority to give retrospective effect when order of punishment such as that of termination and dismissal, it is by now a settled law that an order of termination cannot be passed retrospectively until and unless there was a specific rule making such a provision. A reference for that may be made to the case of *Gulam Nabi* v. *Superintendent of Police, Baramulla* (1). So on this very ground the order of termination passed in this case is not within the ambit of the powers given to the punishing authority. Another snag in the impugned order of punishment is that the punishing authority dispensed with the holding of departmental enquiry by observing that there was no necessity to hold the said departmental enquiry. That possibly does not fall within the ambit of this relevant rule which is rule 14(ii) and reads as follows :

"14. Notwithstanding anything contained in Regulations 8, 9, 10, 11, 12 and 13 :—

(i) ....

(ii) where the punishing authority is satisfied for reasons to be recorded by it in writing that it is not reasonably

(1) 1987 LIC 505

practicable to hold an enquiry in the manner provided in these regulations ; or

(iii) xxx xx xx xx the punishing authority may consider the circumstances of the case and make such order thereon as it deems fit."

(13) A perusal of this rule would show that departmental enquiry can be dispensed with only if the authority concerned is satisfied for the reasons to be recorded in writing that it is not reasonably practicable to hold an enquiry. It is not laid down in this rule that the punishing authority can simply pass an order that there is no need to hold an enquiry. These are two different things. One laying down that it is not reasonably practicable to hold the enquiry and the other that there is no necessity to hold the enquiry. In this case, what the punishing authority has stated in the order is that there was no need to hold the enquiry but the punishing authority has stated in the order is that there was no need to hold the enquiry, but the punishing authority never came to the conclusion that it was not reasonably practicable to hold the enquiry. The matter regarding dispensation of departmental enquriy has come up for consideration in various authorities before their Lordships of the Supreme Court and lately in the case of *Jaswant Singh* v. *State of Punjab* (2). The tenor of these authorities is that this rule must be strictly construed and only in grave cases such a dispensation of enquiry should be accepted by the courts. In the case of Jaswant Singh (supra) their Lordships of the Supreme Court even held that the reasons enumerated in the order holding that it was not practicable to hold the departmental enquiry were not sufficient to uphold that order. In that case the punishing authority found that if the enquiry was held, there was a possibility of the witnesses being put to threats to their own lives and to the lives of their family members. But even this reason was found to be insufficient to dispense with the holding of an enquiry. In the present case, the reasons enumerated by punishing authority are all the more insufficient, simply because the workman could not be served through two or three letters. It cannot be said that it was impracticable to hold the enquiry. At the most, the department could order an enquiry and if the workman was not available, an *ex parte* enquiry could be held into the misconduct of the workman but there was no reason to hold that it was not reasonably practicable to hold the enquiry. Moreover, in this case, the workman has asserted that he had approached the Executive Engineer on 19th May, 1985 for duty for which he has produced copy of letter Ex. W/1 whereas this order of termination was passed on 12th December, 1985.

(2) AIR 1991 SC 385

So looking at the case from any angle, it is clear that the termination of services of the workman was not justified."

"Findings recorded by the learned Single Judge"

"After hearing learned cousnel for the parties and going through the records of the case, this Court is of the view that when the pleadings of the management while defending the case of workman unmistakably point towards the guilt of the workman and the parties lead evidence, then non-framing of an issue would pale into insignificance. The claim of the workman was resisted by the management and in the written statement that was filed by it, it was clearly pleaded that the workman himself abandoned the job with effect from 4th February, 1984. He had proceeded on unsanctioned leave on 4th February, 1984 and thereafter never joined his duties. Several letters were written by the authorities asking him to report for duty. Ultimately, press note was got published in the Newspaper wherein the workman was directed to resume his duties within thirty days, failing which his services shall be terminated. In the affidavit that was filed by the workman with his claim application all that he had mentioned was that due to threat of some anti-social elements, he could not join his duties at his place of posting. There is not even a word mentioned to what was the threat, when was the same given to him and as to whether while going on unsanctioned leave he had ever mentioned this fact in his application seeking leave. That apart, he did not even write to the management at any given time but for as alleged by him on 19th May, 1985 that he was unable to join duties on account of threat given to him. There is, thus, no justification pleaded by him in his claim application for remaining absent from duty for a period of more than two years. *As mentioned above, in his evidence led before the Labour Court, he only tendered his affidavit, reference of which has been given above and in addition only stated that after his father had intimated him about the publication done in the newspaper on 19th May, 1985 he had immediately approached the S.D.E., Circle Ludhiana. Even the Labour Court retruned finding on this crucial point that it was nowhere asserted by the workman that he had reported for duty or sent any communication to the department from 4th February, 1984 to the date of issuing demand notice which was given on 26th April, 1986. The charge on which the workman was retrenched was thus proved to the hilt. In these*

circumstances, the workman did not urge that had there been an issue that he was absent from duty for a period of two years without any cause it should have been proved before the Labour Court. That apart, this Court in the exercise of powers conferred on it under Article 226 of the Constitution of India is primarily concerned with the dispensation of justice and it is not necessary, where there may be some infringement in law while retrenching the workman, there necessarily reinstate him with continuity of service, whatsoever deplorable and blameworthy might be his conduct. It will be too iniquitous to foist upon the management a workman who had been guilty of gross misconduct for remaining absent for more than a period of two years without even informing it without obtaining leave of initial four days and for being absent there is some evidence to show that he had gone abroad."

(14) A bare reading of the above extracted findings shows that while the Labour Court had addressed itself to the two relevant issues and recorded well-reasoned findings for holding that the plea of abandonment raised by the employer was untenable and that there was no valid reason to invoke Regulation 14(ii) of the Regulations, the learned Single Judge has, without even holding that the award passed by the Labour Court suffers from an error of law apparent on the face of it, quashed the same by adverting to the points which were not even pleaded on behalf of respondent No. 1.

(15) A perusal of the record shows that instead of holding regular departmental enquiry in accordance with the procedure prescribed by Regulations 8 to 13 of the Regulations, the Superintending Engineer, Distribution Circle, Ludhiana, had invoked the provisions of Regulations 14(ii) and terminated the appellant's service on the premise that it is not reasonably practicable to hold enquiry. This necessarily means that the concerned authority did not issue notice to the appellant for holding a departmental enquiry into the allegation of long absence from duty nor any enquiry was, in fact, held to prove that allegation and the appellant was also not given opportunity to defend himself against the accusation of wilful absence from duty. Before the Labour Court also, no attempt was made on behalf of respondent No. 1 to justify the termination of the services of the appellant by stating that he has been punished on the basis of the findings recorded in a departmental enquiry held in accordance with the Regulations and the principles of natural justice. It was not even urged on behalf of respondent No. 1 that the Labour Court may itself hold an enquiry and give opportunity to the parties to adduce evidence in relation to the allegation that the

appellant (workman) had absented from duty for more than one year. In view of this, we have no hesitation to hold that the learned Single Judge was not, at all, justified in holding that the charge on which the workman was retrenched was proved to the hilt or that his conduct was deplorable or blame-worthy and, therefore, the Labour Court should not have ordered his reinstatement. With respect, we are unable to agree with the learned Single Judge that in the name of dispensation of justice under Article 226 of the Constitution of India, the Court can ignore the basic parameters laid down by the Supreme Court for issuance of a writ of *certiorari*. In our considered view, justice has to be done to both the parties in accordance with law and not according to particular notions entertained by the individuals.

(16) On the basis of above discussion, we hold that the view taken by the learned Single Judge that the appellant's service had been terminated by way of retrenchment and he was guilty of grave misconduct are not only self-contradictory but is wholly untenable in view of the admited fact that his services had been terminated under Regulation 14(ii) of the Regulations.

(17) Before concluding, we consider it proper to deal with the argument of Shri Deepak Sibal that the continued absence of the appellant afforded ample justification to the Superintending Engineer, Distribution Circle, Ludhiana, to invoke Regulation 14(ii) of the Regulations. He submited that holding of regular enquiry would have proved to be an empty formality because the factum of the appellant's absence from duty could not have been controverted. In our view, this argument of the learned counsel is wholly devoid of substance and deserves to be rejected. An analysis of the order dated 12th December, 1985 shows that in the first two paragraphs the officer concerned noted the fact relating to the absence of the appellant and the issuance/ publication of notices requiring him to resume duty and in the last paragraph he recorded the order for termination of the services of the appellant with effect from 4th February, 1984 by observing that there is no necessity of holding enquiry against the employee. However, neither before the Labour Court and the learned Single Judge nor before us any material has been placed on behalf of respondent No. 1 to show as to why it was not reasonably practicable to hold enquriy into the allegation of absence which constituted the foundation of the action taken by the employer. The use of the stock language of Regulation 14(ii), which is *pari materia* to Article 311(2)(b) of the Constitution cannot be treated as sufficient compliance of the mandatory requirement of recording cogent reasons for dispensing with regular enquiry. Learned counsel has not even suggested that holding of

enquiry was impracticable due to disappearance of evidence or that it would have been contrary to public interest. Rather, he had to concede that there was no difficulty to issue chargesheet to the appellant or to hold regular enquiry and at such enquiry, evidence could have been produced on behalf of the departmental authority to prove that the delinquent had proceeded on leave on 4th February, 1984 without obtaining permission from the competent authority and he had not reported for duty on or after 9th February, 1984 and further that he did not join duty in spite of the notices issued/published at the instance of the competent authority. In view of this, we have no hesitation to hold that the Labour Court had rightly declared that the termination of the services of the appellant is *ultra vires* to Regulation 14(ii) and the learned Single Judge has gravely erred in interfering with the award passed by it.

(18) In *Arjun Chaubey* v. *Union of India* (3), a Constitution Bench of the Supreme Court quashed the order passed by the Deputy Chief Commercial Superintendent of the Northern Railways who exercised power under proviso (b) to Article 311 of the Constitution of India on the ground that no material was available with the said authority for satisfying itself that it was not reasonably practicable to hold inquiry.

(19) In *Jaswant Singh* v. *State of Punjab* (4), the Supreme Court dealt with the scope of Article 311 (2) (b) and held :

> "The decision to dispense with the departmental inquiry cannot be rested solely on the *ipsi dixit* of the concerned authorities. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim and caprice of the concerned officer. In the instant case it was alleged that the delinquent police officer instead of replying to the show cause notice instigated his fellow police officials to disobey the superiors. It is also alleged that he threw threats to beat up the witnesses and the Inquiry Officer, if any departmental inquiry was held against him. No particulars were given. It was not shown on what material the concerned authorities had come to the conclusion that the delinquent had thrown threats. The satisfaction of the concerned authority was found to be based on the ground that the delinquent was instigating his colleagues and was holding meetings "with other police

(3) AIR 1984 SC 1356
(4) AIR 1991 SC 385

officials with a view to spread hatred and dissatisfaction towards his superiors. It was not shown that the concerned authority had verified the correctness of information leading to the said allegation."

(20) In *Chief Security Officer and others* v. *Singasan Rabi Das* (5), the Supreme Court held that there was no justification to dispense with the inquiry merely because the disciplinary authority thought that it was not feasible or desirable to procure witnesses of the security/ other railway employees since that will expose these witnesses and make them ineffective in future and if these witnesses were asked to appear at a confronted inquiry they were likely to suffer personal humiliation and insults and even their family members may also become targets of violence.

(21) In *Kedarnath Singh* v. *Union of India and others* (6), a Division Bench of the Allahabad High Court interpreted rule 47 of the Railways Protection Force Rules, 1959 which is pari materia with proviso (b) to Article 311 (2) and rejected the contention of the employer that the inquiry was not reasonably practicable because the only eye-witness to the alleged incident was not willing to come forward and give testimony against the delinquent. Their Lordships held :

"In our opinion the term reasonably practicable has nothing whatsoever to with the prospects of success of the enquiry for the department should an "enquiry be held as contemplated under Rule 44. 'Practicability' is not to be confused with the expediency or the chances of success of the enquiry contemplated against the delinquent member of the Force. Rule 44 embodies a sound principle of natural justice providing for a full and fair opportunity to the employee against whom it is proposed to award a major penalty which includes dismissal or removal from service. Rule 47 (b) has, therefore, to be construed strictly as it enables the disciplinary authority to give a complete go-by to the aforesaid principles of natural justice embodied in Rule 44 and straightway. On the material collected *ex parte* and behind the back of the delinquent member, to remove or dismiss him. In view of what has been stated above, we are clearly of the view that Rule 47(b) was illegally applied in the case of the petitioner. The grounds disclosed by the Assistant Security Officer were not germane to the considerations on account of which enquiry under Rule 44 could be dispensed with."

(5) 1991(2) SLR 140
(6) 1984 (2) SLR 347

(22) In *M.K. Kunjappan* v. *President of India and others* (7), a learned Single Judge of the Kerala High Court quashed the dismissal of an employee from service which was brought about by invoking proviso (c) to Article 311(2) of the Constitution of India on the ground that the petitioner believed in the philosophy of violence and was also an accused in a murder case and the commission of murder was a part of his philosophy. The learned Judge held that there was nothing to show that holding of an inquiry into the conduct of the petitioner was reasonably linked with the interest of security of the State. This judgement of the learned Single Judge has been upheld in *President of India* v. *Kunjappan* (8), by a Division Bench which observed :

> "The High Court has the power to ascertain whether the opinion formed by the authority has any factual basis and the conditions precedent to its formation were there. In this case the President of India has no doubt powers under clause (c) of the 2nd proviso to Article 311 (2) of the Constitution to dismiss a member of the Civil Service of the Union without an enquiry if and only if he is satisfied that in the interest of security of the State it is not expedient to hold an enquiry into the charges against him. So, two conditions must exist, namely :
>
> (i) the security of the State is involved and
>
> (ii) in view of that it is inexpedient to conduct enquriy. In this case the respondent is only Watcher in a Post and Telegraph Depot. The allegations against him are that he preaches violence, is a member of a political group which was once banned and that he is an accused in a murder case pending trial. In a case where the allegations against civil service personnel in question having nothing to do with the security of the State and he is not one holding a sensitive post there is no justification whatsoever in invoking clause (c) of the Constitution of India. The conditions precedent for the exercise of the power under clause (c) of the proviso are absent here and hence there is no justification for invoking the powers under the clause. If for example, the respondent was involved in spying the posititon would have been different. As long as the activities of the respondent have nothing to do with the security of the State, if action is to be taken against him and if his services are to be dispensed with that can only be after an enquiry as insisted by Article 311 (2) and not in exercise of

(7) 1984 (2) SLR 669
(8) 1985 (1) SLR 494

the powers under Article 311 (2) clause (c) of the proviso. The right conferred by Article 311 of the Constitution on the civil service is a valuable right. It cannot be given the go-by like this. The clauses (b) and (c) of the 2nd proviso to sub-article (2) can be invoked only if the situation really warrants and enquiry cannot be held, because the rule is that a member of the civil service can be dismissed only after a full-fledged enquiry."

(23) In *Union of India* v. *Subramanian* (9), the action taken by the employer to dispense with the inquiry by declaring it to be reasonably impracticable to hold, was declared to be invalid. The Court held that the constitutional requirement of Article 311(2) cannot be converted into a deed letter for the simple reason that the employees have developed class or group feelings.

(24) Similar view has been expressed in *Ex. Constable Sangram Singh* v. *State of Punjab and others* (10), *Ex. Constable Paramjit Singh* v. *State of Punjab and others* (11), *Ex ASI Joga Singh* v. *State of Punjab and others* (12), *Swaran Singh and others* v. *State of Punjab and others* (13), and *Arjan Singh* v. *State of Punjab and others* (14).

(25) In *Gurdev Singh Ex. Constable* v. *State of Punjab and others* (15), a Division Bench of this Court, after reviewing some Judicial precedents, laid down the following proposition :

"(1) Where the authority whose satisfaction is in question has totally failed to apply its mind to relevant consideration.

(2) Where its satisfaction is based on consideration, which are not relevant.

(3) Where the satisfaction is arrived at by the application of a wrong test or where the right questions are not asked.

(4) Where the satisfaction is not grounded on materials which are of rationally prohibitive value.

(5) Where the exercise of power is not in good faith."

(9) 1985 (1) SLR 238
(10) 1995 (4) SLR 536
(11) 1996 (1) RSJ 515
(12) 1996 (1) RSJ 529
(13) 1996 (2) RSJ 755
(14) 1996 (4) RSJ 64
(15) 1995 (5) RSJ 610

(26) We may also notice the decision of the Supreme Court in *Northern Railway Co-operative Credit Society Ltd.* v. *Industrial Tribunal, Rajasthan and another* (16), The facts of that case were that the workman had been removed from service by the employer on the charge of instigating and conspiring with other workmen to paralyse the working of the Society, disobedience of orders of the employer, taking active part in the issue and distribution of leaflets and carrying false propoganda against the management of the Society. The action of the employer was nullified by the Industrial Tribunal on various grounds including the one that the employer could not have avoided enquiry simply because the workman had not attended the proceedings of enquiry on the appointed date. While upholding the award passed by the Tribunal, their Lordships of the Supreme Court observed that "the mere fact that Kanraj did not appear on the date fixed for the enquiry will not, in these circumstances, satisfy the requirement of the principles of natural justice that he should have been told of the details of the charges and the material available in support of these charges should have been disclosed to him."

(27) The question which remains to be considered is whether the appellant should be paid full back wages? No doubt, he has suffered because of the unlawful termination of service, but we cannot ignore the fact that the delay in the decision of the appeal cannot be entirely attributed to respondent No. 1. Faced with this, learned counsel for the appellant stated that his client would feel satisfied if he is awrded at least 25% back wages. Learned Counsel for respondent No. 1 also stated that the offer made by the counsel for the appellant would be acceptable to the authorities of respondent No. 1.

(28) In the result, the appeal is allowed, order of the learned Single Judge is set aside and the award passed by Labour Court, Ludhiana is restored subject to the modification that the appellant shall be entitled to only 25% back wages instead of full back wages for the period between 26th April, 1986 and the date he is being allowed to join duty. The Secretary, Punjab State Electricity Board, Patiala is directed to take him on duty within 15 days of the submission of joining report. It is, however, made clear that respondent No. 1 shall be free to hold enquiry against the appellant in accordance with law.

(29) Copy of this order be given Dasti to the parties on payment of the fee prescribed for urgent applications.

R.N.R.

(16) AIR 1967 SC 1182