by the landlord. In view of this possible difficulty which the landlord may have to face, it was rightly observed that unless the legislative intent was clearly discernible to lead to such consequences it would not be permissible to strain the language of the provision to arrive at such a result.

11. For the reasons indicated above, I consider that the matter was erroneously decided by the Courts below and that under the provisions of section 13 of the Punjab Act the landlord can claim eviction of the tenant if he pleads that the building or the rented land has become unfit or unsafe for human habitation and it is not necesary for him to further plead or prove that the building is required for reconstruction. Taking this view of the matter, I would, allowing the revision petition, set aside the orders of the Courts below and direct that the case may now be tried by the Rent Controller as no finding was given by him on issue No. 2 as to whether the building was unfit or unsafe for human habitation. Considering the difficult nature of the question involved I would leave the parties to bear their own costs.

NARULA, J.—I agree.

R. N. MITTAL, J.—I agree.

K. S. K.

FULL BENCH

Before Harbans Singh, C.J. and Bal Raj Tuli and Prem Chand Jain, JJ.

SATNAM SINGH,—*Appellant.*

Versus

ZILA PARISHAD, FEROZEPUR.—*Respondents.*

Letters Patent Appeal No. 78 of 1971.

April 3, 1974.

District Boards Act (XX of 1883)—Section 27—District Board Rules (1926)—Part V-A Rule 1(1) and Part V-rule 2—Punjab Civil Services (Punishment and Appeal) Rules (1952)—Rule 7—Constitution of India

(1950)—*Articles 14 and 311—Permanent District Board employee—Services of—Whether can be terminated by giving one month's notice or pay in lieu thereof—Rule* 1(1)—*Whether* ultra vires *Article* 14, *Constitution of India.*

Held, (by majority Tuli and Jain, JJ., Harbans Singh, C.J., Contra.) that section 27 of the District Boards Act, 1883, giving power to the District Board to appoint its officers and servants also gives it the power to discharge them from service and the provision for the mode of discharge has been made in rule 1(1) in Part V-A of District Board Rules, 1926. Under that rule the District Board has the power to discharge any officer or servant employed by it by giving him one month's notice or pay in lieu thereof if a contrary provision has not been made in any written contract between the District Board and the employee. Article 311 of the Constitution does not apply to an employee of the District Board and the discharge from service of an employee under rule 1(1) in Part V-A of the Rules *per se* does not amount to removal from service which is not permissible without following the procedure provided in rule 7 of the Punishment and Appeal Rules or rule 2 in Part V of the Rules. Rule 1(1) in Part V-A has the same force as rule 2 in Part V or rule 7 of the Punishment and Appeal Rules. This latter rule has no overriding effect like Article 311 of the Constitution. No doubt the safeguards provided in Article 311 of the Constitution cannot be contracted out but the same cannot be said of the rules in the Punishment and Appeal Rules particularly when a provision for discharge on giving one month's notice is made in the statutory rules having the same force. If at the time of employment a condition of service is stipulated providing for discharge from service, that condition continues to bind the employee unless there is some statutory rule having overriding effect like Article 311 of the Constitution and which cannot be contracted out. Hence the termination of the services of a permanent District Board employee by giving him one month's notice or pay in lieu thereof in terms of the conditions of his appointment and/or rule 1 in Part V-A of the District Board Rules, 1926, can be made and is not bad in law. (Paras 13, 17 and 50)

Held, (per Tuli, J.) that rule 1(1) in Part V-A cannot be struck down as being *ultra vires* Article 14 of the Constitution. (Para 19)

Held, (per Harbans Singh, C.J. Contra.) that rule 1(1) in part V-A of the Rules is not meant to clothe the District Board with any specific power to terminate the services of a permanent employee on just giving one month's notice without following the procedure laid down in Part V. The rule does not confer the District Board with any such pre-emptory and most unfair power to get rid of a permanent Board servant at the whim of the members of the Board who may be influenced by extraneous matters, including political affiliation of the employee or for various other reasons. All that it does is, that it clothes an employee of the District Board with a right to be given one month's notice or one month's pay, before he can be discharged.

The opening words "in the absence of a written contract to the country" in the rule mean that if it is written in the contract of appointment that the employee concerned would be given more than one month's notice or pay, then he would be entitled to that period rather than the period of one month. If in the contract it is written that the Board servant concerned can be discharged without being given any notice, then he shall not be entitled to one month's notice which he otherwise would have been entitled to in view of the wording of this rule. This rule, by itself, does not give any power to the District Board to discharge a permanent servant without assigning any reason whatever on just handing him over one month's salary. The rule is not meant to confer any power on the District Board apart from that which it possessed otherwise either under the rules or under terms of the contract to discharge a person. In a case where the order determining the service of a District Board employee amounts to punishment as it affects his right to hold the post, it would not be correct to say that the order ceases to be an order inflicting punishment because the employee has been given one month's notice. If a person has a right to the post of Secretary of the Board till he attains the age of superannuation and that right has been affected, the order terminating his services *per se* amounts to punishment. It operates as a forfeiture of his rights by bringing about a permanent end of his employment. Hence the services of a permanent District Board employee cannot be terminated by giving him one month's notice or pay in lieu thereof in terms of the conditions of his appointment and/or under rule 1(1) in Part V-A of the District Board Rules, 1926. If so terminated, it is bad in law. (Paras 37, 39, 44 and 48)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh and Hon'ble Mr. Justice Bal Raj Tuli on 13th September, 1972 to a Full Bench for decision of the following questions of law. The Full Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice Prem Chand Jain on 3rd April, 1974 after deciding the question referred to, returned the case to the Division Bench for decision on other points involved in the case.

> *Whether the termination of services of a permanent District Board employee by giving him one month's notice in terms of the conditions of his appointment is bad in law and cannot be made?*

Letters Patent Appeal under clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice A. D. Koshal, dated 18th September, 1970 passed in Regular Second Appeal No. 186 of 1970 reversing that of Shri Pritpal Singh, III Additional District Judge, Ferozepur, dated 22nd December, 1969 (who affirmed that of Shri M. L. Mirchia, Senior Sub Judge, Ferozepur, dated 9th January, 1969) and dismissing the plaintiff's suit and leaving the to bear their own costs throughout.

J. N. Kaushal, Senior Advocate with K. P. Bhandari and I. B. Bhandari Advocates, *for the appellant.*

Mr. Kuldip Singh and R. S. Mongia Advocates, *for the respondent.*

ORDER OF THE FULL BENCH DATED 3rd April 1974.

Tuli,J.—(1) The appellant was selected by the Punjab Public Service Commission for the post of Secretary, District Board, Ferozepur, in 1961, and was appointed as Secretary by that Board on March 21, 1961, with the approval of the Punjab Government. He was confirmed by resolution No. 11 dated February 2, 1963, passed by the District Board with effect from the date of his appointment. By a resolution of the District Board passed at its special emergent meeting held on November 7, 1964, the appellant was suspended pending enquiry into charges which were to be communicated to him. Subsequently, in a meeting of the District Board held on November 26, 1964, a resolution was passed for the discharge of the appellant from service by giving him one month's salary in lieu of one month's notice under rule 1(1) in part V-A of the District Board Rules, 1926, and condition No. 4 of the terms of his appointment. Another resolution was passed in the same meeting not to proceed with the enquiry into the various charges against the appellant in view of the decision to discharge him from service. The order of discharge was served on the appellant on February 10, 1965, when he received it through registered post. The appellant then submitted a representation to the Punjab Government on April 7, 1965, to which he received a reply dated May 5, 1965, informing that he should approach the Commissioner of the Division. On June 7, 1965, the appellant again approached the Punjab Government for its interference under section 50 of the District Boards Act, 1883, as a special case in view of the circumstances leading to his suspension and subsequent discharge from service but without success. Having thus received no redress from the Punjab Government, the appellant filed a suit on December 14, 1967, praying for a declartion to the effect that the order terminating his services, vide District Board Resolution No. 2 dated November 26, 1964, being in reality one of dismissal/removal from service, was illegal, void, *ultra vires*, arbitrary, unjust, *mala fide* and against the provisions of the Constitution of India and the rules governing the service of the appellant and contrary to the canons of justice and equity and that the appellant still continued to be in the service of the District Board, Ferozepur (now Zila Parihad, Ferozepur), a Secretary, entitled to all the emoluments and benefits admissible to him. This suit was decreed by the learned trial Court on January 9, 1969. Against that decree, the Zila Parishad, Ferozepur, filed an appeal before the District Judge, Ferozepur, which was dismissed on December 22, 1969, by the III Additional District Judge, Ferozepur. Against that decree, R.S.A. 186

of 1970, was filed in this Court which was accepted by the learned Single Judge on September 18, 1970, and the suit of the appellant was dismissed. After obtaining the leave of the learned Single Judge, the appellant filed L.P.A. 78 of 1971 which was heard by my Lord the Chief Justice and myself on September 15, 1972, and in view of certain judgments, which were brought to our notice, we decided to refer the following question of law to a Full Bench for decision:—

"Whether the termination of services of a permanent District Board employee by giving him one month's notice in terms of the conditions of his appointment is bad in law and cannot be made ?"

Consequently, this Bench has been constituted to decide that reference.

(2) During the course of arguments, the learned counsel for the parties suggested that the question of law should be reframed so as to include rule 1 in part V—A of the District Board Rules, 1926, along with the conditions of the appellant's appointment, as the impugned order was passed under both the provisions. We have, accordingly, reframed the question of law as under:—

"Whether the termination of services of a permanent District Board employee by giving him one month's notice or pay in lieu thereof in terms of the conditions of his appointment and/or rule 1 in part V—A of the District Board Rules, 1926, is bad in law and cannot be made?"

It has thus to be determined whether the appellant, a permanent Secretary of the District Board, Ferozepur, could be discharged from service by giving him one month's pay in lieu of one month's notice under rule 1(1) in Part V—A of the District Board Rules, 1926 (hereinafter referred to as the Rules), or clause 4 of his letter of appointment containing the conditions of his service or both.

(3) Shri Jagan Nath Kaushal, the learned counsel for the appellant, has vehemently stressed that the appellant was appointed to a statutory post and after entry into service, he acquired a status and was governed by the Punjab Civil Services Rules and condition 4 in the letter of appointment ceased to have any

operation after he was confirmed. Support is sought for this submission from the following observations of the Supreme Court in *Roshan Lal Tandon* v. *Union of Indian and another* (1):—

> "It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servants is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emoluments of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Government under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest."

In my view, the appellant, not being a Government servant, cannot rely upon these observations. The post of the Secretary of a District Board was neither statutory nor was the protection of Artical 311 of the Constitution available to him as he was not a civil servant under the Central Government or the State Government.

(4) Section 27 of the District Boards Act, 1883 (hereinafter referred to as the Act), provided for the employment of officers and

(1) A.I.R. 1967 S.C. 1889.

servants by the District Board as may be necessary and proper for the efficient execution of its duties and of the duties of the local boards acting under it. The appointment of a Secretary had, however, to be made by the Board with the approval of the State Government, if it decided to appoint a Secretary. There was no section in the Act making it obligatory or mandatory for the District Board to appoint a Secretary like section 38 of the Punjab Municipal Act, 1911, wherein a mandatory provision for the appointment of a Secretary has been made in the following words:—

> "38 (1). Every committee shall, from time to time, at a special meeting, appoint, subject to the approval of the State Government, one of its members or any other person to be its secretary, and may, at a like meeting, suspend, remove,dismiss or otherwise punish any person so appointed."

Such a provision is also to be found in section 98 (2) of the Punjab Panchayat Samitis and Zila parishads Act, 1961, as under:—

> "98 (2) There shall be a Secretary of the Zila Parishad, who shall be appointed by the Government on receipt of a proposal from the Zila Parishad."

Sub-section (3) of section 88 *ibid* provides:—

> "88(3) The Secretary shall exercise and perform such powers and functions as may be prescribed and shall be entitled to take part in the meetings of the Zila Parishad or of any standing committee thereof, but shall not be entitled to vote or move any resolution."

The Punjab Government has also made special rules called 'The Punjab Zila Parishads (Powers and Functions of Secretaries) Rules, 1962', prescribing the powers and duties of the Secretary of a Zila Parishad. The Rules, however, do not make any provision for the appointment of a Secretary to the Board. In view of the different provisions with regard to Secretary in the three Acts, discussed above, the post of Secretary of a Municipal Committee or a Zila Parishad can be said to be a statutory post but not the post of a Secretary of the District Board. A District Board was, therefore, not under any statutory obligation to appoint a person to be its

Secretary. It was for the District Board to determine whether a Secretary should be appointed or not. It may be noticed here that District Boards were abolished and replaced by Zila Parishads some time after the discharge of the appellant from service and his case is to be decided in the light of the provisions of the Act and the Rules framed thereunder.

(5) In Part IV of the Rules, the qualifications of certain employees to be employed by the District Board are mentioned and the post of Secretary does not find a place therein. Rule 6.2 of the Rules of Business made by the District Board, Ferozepure, in exercise of its powers under section 26 of the Act and published in the Government Gazette dated December 23, 1940, which came into force on January 1, 1941, prescribed the qualification of every person, who was to be permanently appointed to a substantive post in the service of the Board and for the post of a Secretary, the qualification prescribed was "a graduate of a recognised university who is familiar with office routine or is otherwise fully qualified." This rule only prescribed the qualification but did not make it obligatory for the District Board to appoint a Secretary. If appointed, the Secretary of the Board was to be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, as provided in section 19-C of the Act. Under that section, every officer or servant employed by the District Board, whether for the whole or part of its time and drawing remuneration of not less than Rs. 30 per month, was to be deemed to be a public servant. The post of a Secretary of a District Board, therefore, had no peculiar features and was like the other posts under the Board. The person appointed as Secretary was the employee of the District Board and not of the State Government, as is clear from section 27 of the Act.

(6) Rule 8.1 of the Rules of Business of the District Board, Ferozepur, provided that "in all matters relating to the conditions of service of its employees, the Board shall, so far as may be, follow the rules from time to time in force for servants of the Punjab Government". There was no provision in the Act or the Rules applying the Punjab Civil Services Rules to the officers and servants of a District Board. Those rules were made applicable to the appellant by condition 3 in his letter of appointment. According to rule 8.1 *ibid*, the Punjab Civil Services Rules were to apply in respect of matters for which no provision had been made anywhere else because of the phrase used "so far as may be". Naturally, if a provision was made anywhere else, which went counter to the Punjab

Civil Services Rules, the application of the latter rules stood excluded. It thus follows that the Punjab Civil Services Rules were not to apply to the appellant in respect of matters for which specific provision was made in his letter of appointment, which constituted the contract of service between him and the District Board, as he joined service on those terms after accepting the same. The appellant was thus bound by the conditions of service specified in his letter of appointment which were:—

"1. His appointment shall be subject to the verification of his character and antecedents as satisfactory by the police.

2. His appointment shall be subject to his being declared medically fit by the Civil Surgeon, Ferozepur.

3. For disciplinary action and other matters, i.e., leave etc. his services shall be governed by Civil Services Rules.

4. His services will be terminable on one month's notice on either side provided it will be open to pay him his salary for the period by which the notice falls short of one month. Similarly, if he wishes to resign, he may do so by depositing with the District Board his salary for the period by which the notice given by him falls short of one month.

5. He will not be entitled to any T.A. for the journeys to be performed by him in connection with his medical examination and joining the appointment or on termination thereof .

6. He will be considered on 6 months' probation."

(7) This conclusion also flows from rules 1.3 and 1.4 (ii) of the Punjab Civil Services Rules, Volume I, Part I, which are as under:—

"1.3. When in the opinion of the competent authority, special provisions inconsistent with these rules are required with reference to any particluar post or any conditions of service, that authority may, notwithstanding anything otherwise contained in these rules, and subject to the provisions of clause (2) of Article 310 of the Constitution of India (see Appendix I), provide agreement with the person appointed

to such post for any matters in respect of which in the opinion of that authority special provisions are required to be made: Provided that in every agreement so made it shall be provided that in respect of any matter for which no provision has been made in the agreement, provisions of these rules shall apply.

1.4. These rules shall not apply to—

(i) any Government servant between whom and the Government a specific contract or agreement subsists in respect of any matter dealt with herein to the extent up to which specific provision is made in the contract or agreement."

The submission of the learned counsel for the appellant is that the letter of appointment does not constitute such a contract and, therefore, its terms eased to have any effect after the appellant was confirmed. His main argument is that a special contract of service has to be executed in one of the forms mentioned in the said rules. I regret I cannot agree. Those contracts are with regard to Government posts for which special contracts may be entered into. The purport of these rules is that wherever the appointing authority enters into a contract of service stipulating specific conditions, the employment will be considered to be under that contract and it is not necessary that the contract must be entered into in a certain form. The model forms are only prescribed for guidance and are to be used wherever applicable. It has to be borne in mind that the beginning of the service of the appellant with the District Board, Ferozepur, was on the basis of his letter of appointment which prescribed certain specific conditions of service and, therefore, those conditions continued to bind him. Condition 3 made the provisions of the Punjab Civil Services Rules applicable to the appellant while condition 4 gave mutual right to the District Board as well as the appellant to terminate the service by giving one month's notice or pay in lieu of that notice etc. That condition in the appointment letter shall not be deemed to have been abrogated by the Punjab Civil Services Rules.

(8) The learned counsel for the respondent has relied on a Division Bench Judgment of this Court in *Shri Surjit Singh* v. *Shri Som Dutt and others* (2) in support of his submission that the contract

(2) 1973 (1) S.L.R. 452.

of service contained in the letter of appointment bound both the parties. In that case, Surjit Singh was a confirmed Assistant and he had been appointed against an ex-cadre post of Copy Writer on July 18, 1961, after having been selected by the Punjab Public Service Commission. The post of Copy Writer was made permanent with effect from September 1, 1966, and Surjit Singh wrote a letter to the Director, Public Relations, Punjab, that since he was the only incumbent working against the post of Copy Writer, he was likely to be confirmed on that post as it has been made permanent. He also pointed out that he should be confirmed against the post of Copy Writer without prejudice to his claim that may accrue to him by virtue of his being a substantive Assistant in the ministerial cadre. On October 10, 1966, Surjit Singh was confirmed by the Director, Public Relations Department, against the post of Copy Writer and the condition imposed by Surjit Singh that this confirmation should not prejudice his claim that may accrue to him by virtue of his being a substantive Assistant was accepted by the Government. This acceptance of the condition imposed by Surjit Singh on his confirmation in the post of Copy Writer was held to be a special condition of his service by B. S. Dhillon, J., and it was held that Surjit Singh was entitled to the advantage which accrued to him by virtue of his being a substantive Assistant. The plea on the other side was that Surjit Singh having been confirmed against the permanent post of Copy Writer, his confirmation against the post of substantive Assistant had come to an end and he was not entitled to be considered for further promotion from that cadre. According to the Punjab Civil Services Rules, no Government servant can hold lien on two permanent posts. Pandit J., in a separate Judgment, concurred with the conclusion of B. S. Dhillon, J., that Surjit Singh was entitled to be considered for promotion to the higher post from the cadre of substantive Assistants on the ground that his confirmation in the post of Copy Writer could not be made. In my view, the observations of B. S. Dhillon, J. went too far and did not enunciate the law correctly. I say so with respect to the learned Judge, the reason being that the imposition of a condition for confirmation by Surjit Singh did not constitute a special contract between him and the Government as he was already in service and was governed by the provisions of the Punjab Civil Services Rules, rule 3.12 of which provided that "unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post". This rule continued to apply to Surjit Singh and he could not prescribe a condition which went counter to this rule. The learned

counsel for the respondent, therefore, cannot derive much help from the observations of Dhillon, J., in that case. I am, however, of the view for the reasons stated above, that the conditions stated in the letter of appointment of the appellant continued to bind the parties even after the appellant's confirmation and his services could be terminated by an order of discharge simpliciter in accordance with condition 4 thereof as this condition was almost in the same terms as rule 1 in part V-A of the Rules. As required by rule 1.3 of the Punjab Civil Services Rules, Volume I, Part I, the letter of appointment provided, in condition 3, that the Punjab Civil Services Rules would apply in respect of the matters stated therein and then made a special provision in condition 4 giving right to both the parties to terminate the service by complying with the terms thereof, the like of which is not to be found in the Punjab Civil Services Rules. Condition 3, thus, made applicable the provisions of the Punjab Civil Services Rules to the appellant in respect of disciplinary matters and matters of leave etc. For disciplinary action against any employee of the District Board including the Secretary, the provision is made in Part V of the Rules. But since the rules contained in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter referred to as the Punishment and Appeal Rules), are more benefical to an employee than the rules contained in Part V of the Rules, the Punishment and Appeal Rules will have to be followed while inflicting the penalities provided in rule 4 thereof. Of course, the provisions of rules 3 and 4 in Part V of the Rules will have to be followed for the exercise of the right of appeal for which special provision has been made therein.

(9) It is true, as contended for by the learned counsel for the appellant, that the Punjab Civil Services Rules do not provide for the discharge of a permanent employee after giving him a notice of a certain period. A permanent Government employee can only be discharged if the post held by him is abolished. His service automatically comes to an end on his attaining the age of superannuation and his service can also be terminated by compulsory retirement. The only other way to terminate the service of a Government employee is by dismissal or removal from service after adopting the procedure prescribed in the service rules and after compliance with the provisions of Article 311 of the Constitution. This result follows from the provision in rule 3.12 of the Punjab Civil Services Rules, Volume I, Part I, to the effect that a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. 'Lien' is defined in rule 2.35 *ibid* as under :—

> "2.35. Lien means the title of a Government servant to hold substantively, either immediately or on the termination

of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively."

'Permanent post' is defined in rule 2.46 *ibid* as a post carrying a definite rate of pay sanctioned without limit of time. On the basis of these rules, it is submitted by the learned counsel that on confirmation the appellant acquired the status of a permanent employee of the District Board and a title to hold substantively the post of Secretary, to which he had been permanently appointed, and that his title to the post could not be terminated except on his attaining the age of superannuation or by dismissal or removal from service or by compulsory retirement or abolition of the post. If his services were terminated in any other way, it amounted to removal from service which could not be effected otherwise than by following the rules for inflicting that penalty under the Punishment and Appeal Rules, read with the rules in Part V of the Rules. For this submission, reliance has been strongly placed on the judgment of their Lordships of the Supreme Court in *Moti Ram Deka etc.* v. *General Manager, N.E.F. Railways, Maligaon, Pandu, etc.* (3). It may at once be stated that the ratio of that decision would have applied to the case of the appellant only if he had been a Government servant to whom the protection of Article 311 of the Constitution applied. In the case before their Lordships, the validity of rules 148(3) and 149(3) of the Railway Establishment Code was examined *vis-a-vis* Article 311(2) of the Constitution. On page 694 of the report, it has been stated by Gajendragadkar, J., who spoke for the majority, that—

"The question which we have to consider in the present appeals is whether the termination of services of a permanent railway servant under rule 148(3) or rule 149(3) amounts to his removal under Article 311(2) of the Constitution. If it does, the impugned rules are invalid; if does not, the said rules are valid,"

It may be mentioned that rule 148 of the Railway Establishment Code dealt with the termination of services of railway servants by issuing to them a notice of a certain period specified therein. Rule 148(1) dealt with temporary railway servants; rule 148(2) dealt with apprentices and rule 148(3) dealt with other (non-pensionable) railway servants. Rule 148(3) provided that—

"the service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the

(3) (1964) 5 S.C.R. 683.

periods shown below. Such notice is not, however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

Rule 148(4) provided:—

"In lieu of the notice prescribed in this rule, it shall be permissible on the part of the Railway Administration to terminate the service of railway servant by paying him the pay for the period of notice."

It is thus clear that rule 148(3) empowered the appropriate authority to terminate the services of non-pensionable railway servants after giving them notice of the specified period or paying them their salary for the said period in lieu of notice under rule 148(4). The non-pensionable services were brought to an end in November, 1957, and an option was given to the non-pensionable servants either to opt for pensionable service or to continue on the their previous terms and conditions of service. Thereafter rule 149 was framed in place of rule 148. Rule 149(1) and (2), like rule 148(1) and (2), dealt with the temporary railway servants and apprentices respectively and rule 149(3) dealt with other railway servants and read as under :—

"*Other railway servants.*—The services of other railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not, however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

The rule then specified the different periods for which notice had to be given with regard to different categories of servants. Sub-rule (4) of rule 149 provided:—

"In lieu of the notice prescribed in this rule, it shall be permissible on the part of the Railway Administration to

terminate the service of a railway servant by paying him the pay for the period of notice."

Their Lordships considered the validity of those two rules only *qua* Article 311(2) of the Constitution. With regard to the nature of the right which a permanent servant had under the relevant Railway Rules, the true position was stated by Gajendragadkar, J., speaking for the majority, as under (pp. 706-707 of the report) :—

"A person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must *per se* amount to his removal, and so, if by rule 148(3) or rule 149(3) such a termination is brought about, the rule clearly contravenes Article 311(2) and must be held to be invalid. It is common ground that neither of the two rules contemplates an enquiry and in none of the cases before us has the procedure prescribed by Article 311(2) been followed. We appreciate the argument urged by the learned Additional Solicitor-General about the pleasure of the President and its significance but since the pleasure has to be exercised subject to the provisions of Article 311, there would be no escape from the conclusion that in respect of cases falling under Article 311(2), the procedure prescribed by the said Article must be complied with and the exercise of pleasure regulated accordingly."

(10) The observations of the learned Judge in the next paragraph are also instructive and provide the key to the conclusion arrived at by him. These observations are :—

'In this connection, it is necessary to emphasise that the rule-making authority contemplated by Article 309 cannot be

validly exercised so as to curtail or affect the rights guaranteed to public servants under Article 311(1). Article 311(1) is intended to afford a sense of security to public servants who are substantively appointed to a permanent post and one of the principal benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension, to which a servant substantively appointed to a permanent post is entitled, can be curtailed by Rules framed under Article 309 so as to make the said right either ineffective or illusory. Once the scope of Article 311(1) and (2) is duly determined, it must be held that no rule framed under Article 309 can trespass on the rights guaranteed by Article 311. This position is of basic importance and must be borne in mind in dealing with the controversy in the present appeals."

Rules 148(3) and 149(3) had been framed under Article 309 of the Constitution or corresponding provisions of the Government of India Act, 1935. It was thus emphasised that those rules could not curtail the rights of the Government servants guaranteed under Article 311 of the Constitution. The argument that rule 148(3) or rule 149(3) gave the right to terminate the service to both the parties was repelled with the following observations:—

"It is true that the termination of service authorised by rule 148(3) or rule 149(3) contemplates the right to terminate on either side. For all practical purposes, the right conferred on the servant to terminate his services after giving due notice to the employer does not mean much in the present position of unemployment in this country; but apart from it, the fact that a servant has been given a corresponding right cannot detract from the position that the right which is conferred on the railway authorities by the impugned rules is inconsistent with Article 311(2), and so, it has to be struck down in spite of the fact that a similar right is given to the servant concerned."

An argument was then advanced that a person who, while entering service, executes a contract containing the relevant rule in that behalf

with open eyes, cannot be heard to challenge the validity of the said rule or the said contract. That argument was repelled with the observation that—

> "In our opinion, this approach may be relevant in dealing with purely commercial cases governed by rules of contract; but it is wholly inappropriate in dealing with a case where the contract or the rule is alleged to violate a constitutional guarantee afforded by Article 311(2); and even as to commercial transactions, it is well-known that if the contract is void, as for instance, under section 23 of the Indian Contract Act, the plea that it was executed by the party would be of no avail. In any case, we do not think that the argument of contract and its binding character can have validity in dealing with the question about the constitutionality of the impugned rules."

There are many observations of the learned Judge which go to show that rules 148(3) and 149(3) were held to be invalid because they were inconsistent with Article 311(2) of the Constitution and not because they offended any service rules providing for taking disciplinary action against the railway servants for dismissal or removal from service. Those two rules were also challenged as being violative of Article 14 of the Constitution inasmuch as they purported to give no guidance to the authority which was to operate the said rules and discretion was left in the authority completely unguided in the matter and the rules were so worded that the power conferred by them could be capriciously exercised without offending the rules. Since similar objections under Article 14 of the Constitution have been raised to the validity of rule 1 in Part V of the Rules, this matter has been considered in a later part of the judgment.

(11) Subba Rao, J., in a separate concurring judgment, made certain observations on pages 747 and 748 of the report on which great reliance has been placed by the learned counsel for the appellant. These observations are:—

> "The effect of the two rules is the same; the difference is only superficial, which lies more in clever drafting than in their content. Take for instance the following two rules :
>
> (i) the Government may terminate the services of a permanent Government servant at any time, or after a specified

period but before the normal superannuation age, by way of compulsory retirement ; and

(ii) the Government may terminate the services of a permanent civil servant by giving him 15 days' notice. Arbitrariness is writ large on both the rules; both the rules enable the Government to deprive a permanent civil servant of his office without enquiry. Both violate Article 311(2) of the Constitution. Both must be bad or none at all.

The following principles emerge from the aforesaid discussion. A title to an office must be distinguished from the mode of its termination. If a person has title to an office, he will continue to have it till he is dismissed or removed therefrom. Terms of statutory rules may provide for conferment of a title to an office and also for the mode of terminating it. If under such rules a person acquires title to an office, whatever mode of termination is prescribed, whatever phraseology is used to describe it, the termination is neither more nor less than a dismissal or removal from service; and that situation inevitably attracts the provisions of Article 311 of the Constitution. The argument that the mode of termination prescribed derogates from the title that otherwise would have been conferred on the employee mixes up two clear concepts of conferment of title and the mode of its deprivation. Article 311 is a constitutional protection given to Government servants, who have title to office, against arbitrary and summary dismissal. It follows that Government cannot by rule evade the provisions of the said Article. The parties cannot also contract themselves out of the constitutional provision."

These observations are to be considered only in respect of the termination of services of a permanent civil servant, as is made clear by his Lordship at pages 733 and 734 of the report in the following words:—

"At the outset I must make it clear that I propose to confine my discussion only to the question of termination of

services of a permanent civil servant. None of the observations I may make is intended to have any bearing on the question of termination of the services of other categories of servants."

It is thus apparent that the decision in *Moti Ram Deka's case* (supra), on which great reliance has been placed by the learned counsel for the appellant, does not afford any help to him because of the non-applicability of Article 311 of the Constitution.

(12) We have then to consider whether rule 1 in Part V-A of the Rules is valid and applies to the appellant. This rule reads as under:—

"1(1) In the absence of a written contract to the contrary every officer or servant employed by a District Board shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged during the period of probation or for misconduct or was engaged for a specified term and discharged at the end of it.

(2) Should any officer or servant employed by a District Board in the absence of a written contract authorising him to do so, and without reasonable cause, resign his employment or absent himself from duties without giving one month's notice to the Board, he shall be liable to forfeit a sum not exceeding one month's wages out of any wages due to him and if no wages, or less than one month's wages are due to him, he shall be liable to a penalty not exceeding wages for one month or an amount equal to the difference between one month's wages and the wages due to him."

For the decision of this question, I may keep out of consideration the conditions of service mentioned in the letter of appointment of the appellant. It has been vehemently urged by the learned counsel for the appellant that this rule *proprio vigore* does not confer any power to discharge a District Board employee, but only allows an additional benefit to the employee whose services are sought to be dispensed with. Reliance for this submission is made on the observations of Kapur, J. (as his Lordship then was), in *Dr. Mukand Lal* **v.** *The Municipal Committee of Simla* (4). Dr. Mukand Lal, in that

(4) I.L.R. 1954 Pb. 528.

case, had been employed as permanent Municipal Medical Officer by the Simla Municipal Committee and his services were dispensed with by giving him one month's wages in lieu of notice under section 45(1) of the Punjab Municipal Act. In that case it was pleaded that the services of the petitioner had been terminated for misconduct in view of the allegations that had been levelled against him. Harnam Singh, J., found that plea to be correct and held that the resolution of the Municipal Committee terminating the services of the petitioner was vitiated by the reason of the non-observance of the procedure provided by rule 3 made on February 17, 1925, and rule 14.13 of the Punjab Civil Services Rules read with bye-law 62 of the Simla Municipality. Rule 14.13 of the Punjab Civil Services Rules corresponded to rule 7 of the Punishment and Appeal Rules. Kapur, J., agreed with the conclusion of Harnam Singh, J., and expressly pointed out that—

> "the Committee, if advised, may initiate an enquiry within rule 3 made on the 17th of February, 1925, or rule 14.13, Civil Services Rules, Volume I, read with bye-law 62 of the Simla Municipality and on the basis of that enquiry decide the case on merits."

The learned Judge then discussed the merits of the case and held that—

> "the petitioner was a permanent servant of the Municipal Committee and the evidence shows that the petitioner was discharged for reasons of misconduct and his case is covered by the Civil Services Rules (Punjab), referred to above and by the rules made under section 240 of the Municipal Act and it was necessary in this case to follow the procedure laid down in the Municipal Rules and the Civil Services Rules (Punjab) and his services could not be otherwise terminated."

An argument had been advanced by the learned counsel for the Municipal Committee in that case that section 45(1) of the Punjab Municipal Act gave to the Municipal Committee an unlimited authority to discharge any servant it liked provided it was not for misconduct. While repelling this argument the learned Judge observed:—

> "No doubt, in section 39 the words used are 'suspend, remove, dismiss, or otherwise punish' and the word used in section

45(1) of the Act is 'discharge' but this in my opinion is not a section of limitation on safeguards but makes a further provision in favour of the servants. If the Civil Services Rules (Punjab)) apply, as indeed they do, then 'discharge' in section 45(1) cannot apply to the removal of permanent servants from service. By the extension of the Civil Services Rules (Punjab) to Municipal servants and the rules made under the Municipal Act a protection is given to the Municipal employees against the vagaries of the Municipal Committees who might at any time by the brute force of majorities try to terminate the services of employees whom they find to be inconvenient or whom they do not like. I do not think that section 45(1) has in any way taken away that guarantee or protection which the law seems to give to all Municipal servants and which the Constitution of India has now given to the civil servants under the Central Government and the States. Indeed, in democracies it is necessary that servants who have very often to perform unpalatable duties should receive every kind of protection against the tyranny of majorities or the whims of leaders of such majorities and it was for that reason that these rules seem to have been framed and extended to Municipal Committees and there was never a greater necessity for these rules than there is now when everything is governed by force of numbers and very often this force is used without any restraining force."

From these observations, it is spelt out that rule 1(1) in Part V-A of the Rules, which is in identical terms as section 45(1) of the Punjab Municipal Act, does not place any limitation on the safeguards provided to the District Board employees by the Punjab Civil Services Rules but makes a further provision in their favour and that 'discharge' in the said rule cannot apply to the removal of permanent servants from service. I am unable to agree to the submission of the learned counsel. In that case both the learned Judges of the Division Bench came to the conclusion that the services of Dr. Mukand Lal had been terminated on account of misconduct for which the procedure provided in the statutory rules had to be followed. The observations of Kapur, J., quoted above, in the context they had been made, only lead to the conclusion that removal from service on account of misconduct cannot be called discharge

within the meaning of that word in section 45(1) of the Punjab Municipal Act. These observations do not lead to the conclusion that a permanent employee cannot be discharged from service under a statutory rule applicable to him after complying with the conditions contained therein.

(13) According to the learned counsel for the appellant the power to discharge must be found somewhere else and that there is no other provision in the Act or the Rules giving such a power to the District Board to dispense with the services of an employee after giving him a month's notice. The only case of discharge from service mentioned in the Punjab Civil Services Rules is when the post held by the Public servant is abolished. The retirement on attaining the age of superannuation does not amount to discharge from service nor does the compulsory retirement in accordance with the Rules. There is no merit in this submission for section 14 of the Punjab General Clauses Act, which applies for the interpretation of the statutes made by the Punjab Government, provides that—

> "Where, by any Punjab Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend or dismiss any person appointed, whether by itself or any other authority, in exercise of that power."

It is not disputed that rule 1 in Part V-A of the Rules has the same force as if enacted in the Act. A similar provision is contained in section 16 of the General Clauses Act, 1897, in respect of the Central Acts and with regard to that section it has been held by a Full Bench of the Delhi High Court in *Indian Institute of Technology* v. *Mangat Singh* (5), that "a power to appoint includes the power to suspend or dismiss including the power to terminate the service of an employee by a simple discharge". In that view of the matter, the power to discharge an employee is inherent in the appointing authority because of the power to appoint vesting in him or it. It thus follows that section 27 of the Act giving power to the District Board to appoint its officers and servants also gives it the power to discharge them from service and the provision for the mode of discharge has been made in rule 1(1) in Part V-A of the Rules. In this view of the

(5) 1973 (2) S.L.R. 46.

matter, under that rule the District Board has the power to discharge any officer or servant employed by it by giving him one month's notice or pay in lieu thereof if a contrary provision has not been made in any written contract between the District Board and the employee. Since Article 311 of the Constitution does not apply to an employee of the District Board, it cannot be urged that the discharge from service of an employee under rule 1(1) in Part V-A of the Rules *per se* amounts to removal from service which is not permissible without following the procedure provided in rule 7 of the Punishment and Appeal Rules or rule 2 in Part V of the Rules. Rule 1(1) in Part V-A has the same force as rule 2 in Part V or rule 7 of the Punishment and Appeal Rules and it cannot be said that rule 7 of the Punishment and Appeal Rules has any overriding effect like Article 311 of the Constitution. It has been held by their Lordships of the Supreme Court in *Moti Ram Deka's case* (3) (supra), that the safeguards provided in Article 311 cannot be contracted out but the same cannot be said of the rules in the Punishment and Appeal Rules particularly when a provision for discharge on giving a month's notice is made in the statutory rules having the same force.

(14) The learned counsel for the appellant is, in my opinion, not correct when he submits that the discharge of an employee after giving him notice of the specified period is inconsistent with his lien to the post or the permanency of his service. This matter is concluded by the judgment of the Supreme Court in *S. R. Tewari* v. *District Board, Agra and another* (6) wherein rule 3-A of the District Board Rules, framed by the State of U.P., in exercise of the powers under section 172(2) of the District Boards Act, 1922, was held to be valid. This rule read as under:—

"3*A*. The period of office of a permanent servant of the board other than a Government servant in its employ shall not determine until—

(i) his resignation has been accepted in writing by the authority competent to appoint his successor, or he ceases to be in service by the operation of the rules regulating the retirement of district boards servants, or

(ii) he has given such authority at least three months' notice where his pay exceeds Rs. 15 and in other cases at least one month's notice, or

(6) (1964) 3 S.C.R. 55.

(iii) he has paid or assigned to the board a sum equal to three months' pay where his pay exceeds Rs. 15 and in other cases a sum equal to one month's pay;

(iv) he has been given by the authority competent to appoint his successor not less than three months' notice or a sum equal to three months' pay in lieu of notice where pay exceeds Rs. 15 and in other cases, not less than one month's notice or a sum equal to one month's pay in lieu of notice."

The relevant observations are as under (page 66 of the report):—

"Under the rules, therefore, dismissal, removal or reduction of an officer or servant may be effected only after affording him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. *But the services of even a permanent servant of the Board may be determined in the manner provided by rule 3A*". (emphasis supplied).

Shah, J., speaking for the Court, also observed as under:—

"The Board by its resolution dated October 18, 1954, purported to exercise the power of determination in the manner and subject to conditions prescribed by rule 3A. The determination was by resolution of the Board and *prima facie*, that exercise of the power may be effective. Counsel for the appellant contended that in the absence of a specific power to determine employment conferred by the Act itself, a rule which prescribed restrictions on the exercise of that power was wholly sterile. It was urged that the State Government has prescribed conditions under which the employment of a permanent servant of a Board may be determined, but the Legislature not having conferred upon the Board the power to determine employment otherwise than by way of dismissal as Punishment, the conditions under which the power could be exercised served no purpose. We are unable to agree with that contention. By section 82 power of the Board to decide questions arising in respect of the service including the power to punish, dismiss, transfer and control servants of the Board is statutorily delegated to the

President in case of servants drawing a salary exceeding Rs. 40 per mensem, and to the Secretary for other servants. But the exercise of the power is subject to the conditions prescribed in the provisos. Upon the exercise of the power under section 82 vested in the Board, the President and the Secretary, there is yet another set of restrictions imposed by section 84. The power is subject, among others, to the rules imposing conditions on the appointment of persons to offices or to particular office requiring professional skill and on the punishment or dismissal of persons so appointed, and to rules relating to servants of the Board. The rule providing for the procedure for termination of employment of servants of the Board is a rule relating to servants of the Board and may properly be made under section 84(d) read with section 172(2). Power to appoint ordinarily carries with it the power to terminate appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint. The power to terminate employment is, therefore, to be found in section 82 and the method of its exercise is prescribed by the rules referred to in section 84. The rules deal with the conditions under which an officer or servant may be dismissed (the dismissal being by way of punishment) and also under which determination of employment may take place.

It was urged that rule 3A does not indicate the authority by whom termination is to be effected. But clause (iv) in terms provides that the period of office of a permanent servant of the Board shall not determine until he has been given by the authority competent to appoint his successor notice of the duration specified. It is the notice which terminates the employment and the authority competent to give the notice is the authority competent to appoint the successor of the servant concerned."

It is thus clear from these observations that the District Board had the authority to appoint the Secretary and to terminate his services by discharge in accordance with rule 1(1) in part V-A of the Rules.

(15) Relying on the judgment in *Moti Ram Deka's case* (3) (supra), a Division Bench of the Allahabad High Court in *Sharat Chand Misra* v. *The State of U.P. and others* (7) observed as under: —

> "The position of a servant under the District Boards Act is not very much different from that of a Government servant. Just as in the case of a permanent Government servant, Fundamental Rule 56 prescribed the age of superannuation, in the same way in the rules framed under Notification No. 1-923-A/IX-A-1(22)-67 dated 24th of June, 1968, it has been provided that the age of retirement from service of all employees of the District Board shall be 58 years. This indicates that once a District Board servant is permanently appointed to a post, he gets a right to hold the post till the age of superannuation, that is, 58 years and termination of his employment before he reaches that age would *per se* be punishment as it entails forfeiture of his rights. In such a case the Regulation regarding dismissal, removal or reduction of officers and servants of the District Board, printed at page 193 of the Manual comes into operation. According to this Regulation no officer or servant can be dismissed or removed without reasonable opportunity being given to him for showing cause against the action proposed to be taken against him. Rule 3-A printed at page 189 of the Manual, has got to be read along with Regulation printed at page 193. Whether rule 3-A applies or not, it would be necessary to afford a reasonable opportunity to a servant to show cause against the action proposed to be taken against him in case he is to be dismissed or removed from service."

It is evident from the above observations that the learned Judges did not decide that rule 3-A of the U.P. District Boards Rules was void and no action could be taken thereunder for discharging a permanent employee from service. All that was said was that a show-cause notice against the action proposed should have been given to the employee. The decision of the Division Bench was specifically overruled by a Full Bench of that Court in *Jaganandan* v. *State of Uttar Pradesh and others* (8). The learned Judges of the Full Bench relied on the decision of the Supreme Court in *S. R. Tewari's case* (6) (supra), and observed that according to this decision—

> "Rule 3-A is valid and can be utilised by the competent authority when the services of a permanent employee are to be

(7) 1971 S.L.R. 624.

(8) 1973 (2) S.L.R. 41.

determined simpliciter without intending to inflict any punishment. Rule 3-A as well as the rule framed under the notification dated March 25, 1946, operate in different fields, the latter covering a case of an order of punishment by way of dismissal or removal only."

The employees invited the attention of the Bench to the Supreme Court's decision in *Moti Ram Deka's case* (3) (supra) and the learned Judges distinguished that case on the ground that the decision proceeded on the basis of Article 311 and the definition of 'lien' and 'permanent post' in the Railway Establishment Code which gave the right to the permanent railway servant to hold the post until he reached the age of superannuation or until he was compulsorily retired under the relevant rules. The learned Judges also observed that *S. R. Tewari's case* (6) had been decided on April 15, 1963, by a Bench consisting of B. P. Sinha, C.J., J. C. Shah and N. Rajagopala Ayyangar, JJ., while *Moti Ram Deka's case* (3) was decided eight months later on December 15, 1963, by a Bench of seven Judges of which Shah and Rajagopala Ayyangar, JJ., were members. In none of the judgements delivered in *Moti Ram Deka's case* (3) was *S. R. Tewari's case* (6) considered or even referred to. Evidently, the decision in *S. R. Tewari's case* .(6) was not considered material or relevant because District Board employees do not have the guarantee as the Government servants have under Article 311 of the Constitution. Exhypothesi, *Moti Ram Deka's case* (3) was not applicable to District Board servants who are to be governed by *S. R. Tewari's case.* I am in respectful agreement with the decision of the Full Bench of the Allahabad High Court and have no hesitation in holding that rule 1(1) in Part V-A of the Rules is valid and action can be taken under that rule even in respect of permanent employees if it is sought to discharge them from service simpliciter and not by way of punishment. The rules in Part V of the Rules and the punishment and Appeal Rules operate in a different field, that is, when dismissal or removal from service is made by way of penalty or punishment.

(16) Great reliance has been placed by the learned counsel for the appellant on the Full Bench judgment of the Delhi High Court in *Indian Institute of Technology* v. *Mangat Singh* (5) (supra), in which distinction has been brought out between purely commercial statutory corporations and quasi-Governmental statutory corporations like local authorities and in that light the various decisions of the Supreme Court have been distinguished. An observation was made that—

"the employment in a particular case would remain contractual if the volition of the parties is left unfettered. But it

would be governed by status if the volition has been taken away by statutory provisions."

The cases before the Full Bench were of dismissal or removal from service and it was in that light that the matter was considered by the learned Judges as to whether the rules providing for those matters had to be followed or not before terminating the services of a permanent employee and whether such an employee had the right to file a petition under Article 226 of the Constitution and claim reinstatement. The matter of discharge from service in accordance with the Service Rules or contract between the parties was not for adjudication before the Bench. The following observations in para 7 of the report may be referred to in this behalf:—

"The obligation to respect the permanency of an employee and also the obligation to follow the natural justice procedure before imposing a punishment on an employee are thus mandatory statutory obligations imposed on the Institute. A breach of such obligation would enable the aggrieved employee to file a writ petition against the Institute under Article 226 of the Constitution. The Supreme Court has consistently taken the view that the breach of a Statute or an Ordinance framed under the Act constituting a University or an educational institution like the Institute would make the action of the University or the Institution *ultra vires* and a declaration of such invalidity would reinstate the employee whose service was terminated by such *ultra vires* action."

The observations in para 21 of the report are strongly relied upon by the learned counsel for the appellant which are as under :—

"The statutory status as an employee is a privilege which is ordinarily enjoyed only by holders of public offices serving under the Government. When, however, Governmental activities are increasingly entrusted to statutory corporations, the question arises whether this privilege of a civil servant should extend to the employees of these statutory corporations particularly when they are performing the same functions as would have been performed by the Government otherwise. On the one hand, such a security

of tenure is given only to a public servant who is discharging a public duty. He is in public employment and does not serve any personal master. On the other hand, the efficiency of the employees of commercial corporation would be impaired if they are given a security of tenure which is unknown in a purely master and servant relationship. It is not surprising, therefore, that two divergent views have been judicially expressed according as one or the other of the above two considerations prevailed."

That judgement, in my opinion, is an authority on the proposition that the employees of a statutory corporation are governed by the statutory regulations after they are employed and if a provision is made in the statutory rules or regulations for a certain procedure to be followed before terminating their services, the corporation is under a statutory obligation to follow that procedure. If that procedure is not followed, the termination of services can be held to be illegal and void. The ratio of this decision will, therefore, cover the case where the power to discharge on certain conditions has been provided for in a statutory rule and the discharge from service is made in accordance with that rule or if a similar stipulation is made in the contract of employment and the services are dispensed with according to that stipulation. In such a case it cannot be said that the condition in the initial contract of employment with regard to a particular stipulation is superseded by statutory rules or regulations to which an employee becomes subject after his employment particularly when such a stipulation is also to be found in a statutory rule governing him. The stipulation in the letter of appointment only highlights that condition in the statutory rule which cannot be said to have been nullified by any other statutory rule unless it has an overriding effect like Article 311 of the Constitution which cannot be contracted out. The Full Bench of the Delhi High Court greatly relied on the decisions of the Supreme Court in *Mafatlal Naraindas Barot* v. *Divisional Controller, State Transport Corporation and another* (9) and *Sirsi Municipality* v. *Cecelia Kom Francis Tellis* (10) both of which related to the dismissal of an employee of a quasi-Governmental statutory corporation effected without following the statutory rules on the point. In *Barot's case* (9) (supra), it was held by their Lordships of the Supreme Court that :

"The order of termination passed against the appellant is bad in law since it contravenes the provisions of clause 4(b) of the Regulation and also the principles of natural justice."

(9) (1966) 3 S.C.R. 40.
(10) (1973) 1 S.C.R. 409.

Rule 4(b) provided that—

> "A person against whom action is proposed to be taken for any act of misconduct, shall be provided with a copy of the charge or charges as well as a statement of allegations that have been made against him, and over which enquiry is being held."

The plea of the State Transport Corporation that the action was taken under Regulation 61, according to which service of a permanent employee could be dispensed with after giving him sixty days' notice or sixty days' pay in lieu thereof, was not accepted. After referring to the facts of the case, it was found that the order of dismissal had been passed by way of punishment because the employee had absented himself without leave which constituted misconduct on his part.

(17) In *Sirsi Municipality's case* (10) (supra), the correctness of the decision of the Supreme Court in *S. R. Tewari's* case was not doubted. In paragraphs 24 and 25 of the report that case was referred to and quoted from in so far as the dismissal of an employee was concerned. None of the cases noticed by Deshpande, J., while speaking for the Full Bench of the Delhi High Court, related to the discharge of a permanent employee of a quasi-Governmental statutory corporation in terms of the statutory rules of service providing for discharge from service after a notice of a specified period. I am further of the opinion that if at the time of employment a condition of service is stipulated providing for discharge from service, that condition continues to bind the employee unless there is some statutory rule having overriding effect like Article 311 of the Constitution and which cannot be contracted out.

(18) There is also no force in the submission of the learned counsel for the appellant that condition 4 in the terms of appointment is void under section 23 of the Contract Act as it is of such a nature that, if permitted, it would defeat the provisions of any law. The only argument in support of this plea is that no such provision for discharge from service having been made in the Punjab Civil Services Rules, this condition in the contract of service will defeat the provisions of those rules with regard to permanency of tenure and the lien to the post. As I have said above, those rules have no overriding effect and have to be administered along with the Rules. The Punjab Civil Services Rules have been made applicable specifically

by condition 3 of the terms of appointment and that condition stands along with condition 4, both of which form part of the same contract. It is, therefore, obvious that condition 4 was to have force in spite of anything to the contrary contained in the Punjab Civil Services Rules. The lien as defined in the Punjab Civil Services Rules only means a right to hold the post as long as the employee is in service. If the service is put an end to in accordance with the statutory rules or conditions of service contained in the contract of employment, then the lien will vanish along with the service. The discharge from service in accordance with the rules governing the service or the conditions in the contract of service cannot be said to contravene the rule as to lien on a permanent post of that employee. To emphasise, lien exists only so long as the employee is in service and not after he has been relieved of the post in any manner authorised by the Service Rules or the contract of service.

(19) The only other point that remains to be decided is whether rule 1(1) in Part V-A of the Rules in *ultra vires* Article 14 of the Constitution. This matter was raised before the Supreme Court in *Moti Ram Deka's case* (3) (supra) with regard to rules 148(3) and 149(3) of the Railway Establishment Code. Two grounds were pressed in support of the submission, namely, (i) the rules purported to give no guidance to the authority which was to operate the said rules; no principle was laid down which could guide the decision of the authority in exercising its power under the said rule; discretion was left in the authority and the rules were so worded that the power conferred by them could be capriciously exercised without offending the rules; and (ii) that no other branch of public services either under the States or under the Union contained any rule corresponding to the impugned rules and the railway employees were singled out for a hostile or discriminatory treatment. Gajendragadkar, J., speaking for the majority of the Judges, did not express any opinion on the first ground but accepting the second ground, the rules were held to be invalid for the reason that it was difficult to understand on what ground employment by the Railway alone could be said to constitute a class by itself for the purpose of framing the impugned rules. Subba Rao, J., said nothing and agreed with the majority on this point. Dass Gupta, J., held the impugned rules to be *ultra vires* Article 14 on the first ground of arbitrariness. His Lordship referred to the following observations of the Supreme Court in *Ram Krishna Dalmia* v. *Justice S. R. Tendolkar & Ors.* (11) :—

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may

(11) 1959 S.C.R. 279.

leave it to the discretion of the Government to select and classify, persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification, but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification."

and observed: —

"Applying the principle laid down in the above case to the present Rule I find on scrutiny of the Rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The Rule thus enables the authority concerned to discriminate between two railway servants to both of whom Rule 148(3) equally applied by taking action in one case and not taking it in the other. In the absence of any guiding principle in the exercise of the discretion by the authority the Rule has therefore to be struck down as contravening the requirements of Article 14 of the Constitution."

Shah, J., who wrote the dissenting judgment, held that the impugned rules did not violate either Article 311 or Article 14 of the Constitution. The learned Judge referred to the following observations of Bose, J., in the judgment of the Supreme Court in *Satish Chandra Anand v. Union of India*, (12): —

"There was no compulsion on the petitioner to enter into the contract he did. He was as free under the law as any other person to accept or to reject the offer which was made to him. Having accepted, he still has open to him all the rights and remedies available to other persons similarly situated to enforce any right under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary courts of the land such remedies for a breach as are open to him to exactly the same extent as

(12) 1963 S.C.R. 655.

other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which other similarly situated could claim"

and observed:—

"These observations in my judgment would with appropriate variations, be applicable in considering the validity of Rules 148(3) and 149(3). In adjudging whether there is by the impugned rules a denial of the equal protection of the laws, no rational ground of distinction can be found between an employee who is but for the rule for termination of employment by notice, by the contract entitled to continue in employment for a specified duration, and one who is appointed to a substantive post till superannuation. In one case the employment is for a period defined or definable, in the other there is employment till super-annuation, and in both cases liable to be terminated by notice. If with his eyes open, a candidate for employment accepts a post permanent or temporary tenure of which is governed by Rules, he cannot after accepting the post seek to avoid the onerous terms of employment. This is not to say that acceptance of covenants or rules which are inconsistent with the Constitution is binding upon the public servant by virtue of his employment. Such covenants or rules which in law be regarded as void, would not affect the tenure of his office.

The law which applies to railway servants falling within the class to which Rules 148(3) and 149(3) apply is the same. There are no different laws applicable to members of the same class. The applicability of the law is also not governed by different considerations. It is open to the appointing authority to terminate appointment of any person who falls within the class. There is, therefore, neither denial of equality before the law, nor denial of equal protection of the laws. All persons in non-pensionable services were subject to Rule 148(3). There was no discrimination between them: the same law which protected other servants in the same group—non-pensionable servants—protected the appellants in appeals Nos. 711-14 of 1962, and also provided for determination of their employment.

The Rule, it is true, does not expressly provide for guidance to the authority exercising the power conferred by Rule 148, but on that account the Rule cannot be said to confer an arbitrary power and be unreasonable, or be in its operation unequal. The power is exercisable by the appointing authority who normally is, if not the General Manager, a senior officer of the Railways. In considering the validity of an order of determination of employment under Rule 148, an assumption that the power may be exercised *mala fide* and on that ground discrimination may be practised is wholly out of place. Because of the absence of specific directions in Rule 148 governing the exercise of authority conferred thereby, the power to terminate employment cannot be regarded as an arbitrary power exercisable at the sweet will of the authority, when having regard to the nature of the employment and the service to be rendered, the importance of the efficient functioning of the rail transport in the scheme of our public economy, and the status of the authority invested with the exercise of the power, it may reasonably be assumed that the exercise of the power would appropriately be exercised for the protection of public interest on grounds of administrative convenience. Power to exercise discretion is not necessarily to be assumed to be a power to discriminate unlawfully, and possibility of abuse of power will not invalidate the conferment of power. Conferment of power has necessarily to be coupled with the duty to exercise it *bona fide* and for effectuating the purpose and policy underlying the rules which provide for the exercise of the power. If in the scheme of the rules, a clear policy relating to the circumstances in which the power is to be exercised is discernible, the conferment of power must be regarded as made in furtherance of the scheme, and is not open to attack as infringing the equality clause. It may be remembered that the rules relating to termination of employment of temporary servants and those on probation, and even those relating to compulsory retirement generally do not lay down any specific directions governing the exercise of the powers conferred thereby. The reason is obvious: the appointing authority must in all these cases be left with discretion to determine employment having regard to the exigencies of the service, suitability of the

employee for absorption on continuance in the cadre, and the larger interests of the public being served by retaining the public servant concerned in service. In my view Rule 148(3) cannot, therefore, be regarded as invalid either as infringing Article 311(2) of the Constitution or as infringing Article 14 of the Constituton. For the same reasons Rule 149(3) cannot also be regarded as invalid."

As the majority of the Judges have expressed no opinion on the point, the reasoning of Shah, J., appeals to me more than the reasoning of Dass Gupta, J., and I say so with respect to both the learned Judges. The view taken by Shah, J., finds support from the following observations of their Lordships of the Supreme Court in *Pannalal Binjraj* v. *Union of India* (13). In that case section 5(7A) of the Income-tax Act, 1922, inserted by the Amending Act 26 of 1956, was challenged as being discriminatory and violative of the Fundamental Rights enshrined in Article 14 of the Constitution. It was urged that the power which was vested in the Commissioner of Income-Tax and the Central Board of Revenue was a naked and arbitrary power unguided and uncontrolled by any rules. No rules had been framed and no directions given which would regulate or guide their discretion or on the basis of which such transfers could be made and the whole matter was left to the unrestrained will of the Commissioner of Income-Tax or the Central Board of Revenue without there being anything which could ensure a proper execution of the power or operate as a check upon the injustice that may result from improper execution of the same. This argument was repelled with the observation that:

"It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. [Vide *Matajog Dobey* v. *H. S. Bhari* (14).] There is moreover a presumption that

(13) 1957 S.C.R. 233.
(14) (1955) 2 S.C.R. 925.

> public officials will discharge their duties honestly and in accordance with the rules of law. [Vide People of the *State of New York* v. *John E. Van De Carr, etc.* (15)]. It has also been observed by this Court in *A. Thangal Kunju Musaliar* v. *M. Venkitachalam Potti* (16) with reference to the possibility of discrimination between assessees in the matter of the reference of their cases to the Income-tax Investigation Commission that 'It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done "not with an evil eye and unequal hand" and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory, ".

On the parity of reasoning, rule 1(1) in Part V-A of the Rules cannot be struck down as being *ultra vires* Article 14 of the Constitution but the exercise of power under this rule may be challenged on any ground open to the aggrieved person. In the case of the appellant, the bar of Article 14 cannot be even pleaded because of the specific term in the conditions of his service on which he accepted the employment.

(20) For all the reasons given above, I am unable to hold that rule 1(1) in Part V-A of the Rules cannot be made applicable to permanent employees of the District Board and it applies only to those employees who have not been made permanent, that is, whether they are temporary or on probation or are awaiting confirmation after completing the period of probation, as submitted by the learned counsel for the appellant. In the case of the appellant, the period of probation was prescribed as six months which expired on September 21, 1961, but he was confirmed on February 2, 1962, although with effect from the date of his original appointment, that is, March 21, 1960. I do not think that condition 4 was provided in the terms of employment only for that period. If a necessity arose to dispense with the service of the appellant during the period of his probation, no notice was necessary to be issued to him under that rule and till he was confirmed, he continued to be a probationer and for that reason too no notice was necessary to be issued to him in case he was to be discharged from service. It, therefore, necessarily

(15) (1905) 310—199 U.S. 552; 50 L. Ed. 305.
(16) (1955) 2 S.C.R. 1196.

follows that the rule with regard to giving of notice of one month before discharge concerns the employees whose cases are not specifically excluded from the operation of that rule, that is, employees on probation or engaged for a specified term and discharged at the end thereof. This rule, in my opinion, applies to both permanent and temporary employees. In this view of the matter, I hold that the District Board, Ferozepur, was competent to issue the notice of discharge to the appellant. My answer to the question referred to the Full Bench for decision is, therefore, in the negative, that is, the termination of services of a permanent District Board employee by giving him one month's notice or pay in lieu thereof in terms of the conditions of his appointment and/ or rule 1 in Part V-A of the Rules can be made and is not bad in law. The appeal will go back to the Division Bench for decision on other points involved in the case. It will be open to the appellant to urge before the Bench that the discharge from service, through a camouflage in the language, really amounted to dismissal or removal from service by way of punishment which could not be effected without following the procedure prescribed in the Punishment and Appeal Rules and/or the rules contained in Part V of the Rules. In view of the difficult nature of the question of law referred to this Bench for decision, the parties are left to bear their own costs of this reference.

(21) HARBANS SINGH, C.J.,—I have carefully gone through the elaborate judgment prepared by my learned brother, B. R. Tuli, J. Notwithstanding the very great respect in which I hold his views, I have not been able to persuade myself to agree with the conclusion arrived at by the learned Judge.

(22) The facts and the arguments have been dealt with in detail by the learned Judge and it is not necessary to repeat them. All that is necessary to say is that admittedly the appellant was appointed as the Secretary of the District Board (as it was then called and is now known as Zila Parishad and hereinafter will be referred to as the District Board), Ferozepur, on the recommendation of the Punjab Public Service Commission. The appointment, as was required by the District Board Act, 1883, was made under the orders of the State Government as is clear from the copy of the office order, Exhibit P-2, which formed the basis of the appointment of the appellant. This letter contained a number of terms on which the appellant was appointed. For the purpose of this case only terms Nos. 3, 4 and 6 need be referred to. According to term No. 6 he was

considered on six months' probation. Terms Nos. 3 and 4, on which great stress was laid, were as follows:—

3. For disciplinary action and other matters, i.e., leave, etc., his services shall be governed by Civil Services Rules.
4. His services will be terminable on one month's notice on either side provided it will be open to pay him his salary for the period by which the notice falls short of one month. Similarly if he wishes to resign he may do so by depositing with the D. B. his salary for the period by which the notice given by him falls short of one month.

(23) This order of appointment was issued to him on 9th March, 1961, and it is stated that he took over charge on 21st March, 1961. There is no dispute that he completed his period of probation successfully and, by a resolution No. 11, dated 2nd February, 1963, passed by the District Board, he was confirmed with effect from the date of his appointment.

(24) Less than two years thereafter, by a resolution of the District Board passed at its special emergent meeting held on 7th November, 1964, the appellant was suspended pending enquiry into charges which were to be communicated to him. In fact, no such charges were ever communicated, because, by a subsequent resolution passed on 26th November, 1964, the appellant was given one month's salary and his services were terminated in terms of rule 1(1) in Part V-A of the District Board Rules, 1926, and term No. 4 of the terms of his appointment which has been reproduced above. In the same meeting a resolution was passed not to proceed with the enquiry into the various charges against the appellant in view of the decision to discharge him from service. This order of discharge was served on him on 10th February, 1965.

(25) The appellant then submitted a representation to the Punjab Government on 7th April, 1965, to which he received a reply to approach the Commissioner of the Division. Another reference made by him to the Punjab Government to interfere under section 50 of the District Boards Act, 1883, proved unsuccessful. He then filed a suit on 14th December, 1967, praying for a declaration to the effect that the order terminating his services, vide resolution dated 26th November, 1964, aforesaid, amounted to his removal from service and was, therefore, illegal, void, *ultra vires*, arbitrary unjust, *mala fide*

and against the provisions of the Constitution of India and the rules governing the service of the appellant.

(26) The suit was decreed by the trial Court and the appeal filed by the District Board was also dismissed by the first appellate Court. However, Regular Second Appeal No. 186 of 1970 filed by the District Board was accepted and hence this appeal under clause 10 of the Letters Patent was filed by the presest appellant after obtaining leave of the learned Single Judge

(27) The matter being of importance was referred to the Full Bench and the question of law for decision by the Full Bench, as reframed by the Full Bench, is as follows:—

> "Whether the termination of services of a permanent District Board employee by giving him one month's notice or pay in lieu thereof in terms of the conditions of his appointment and/or rule 1 in part V-A of the District Board Rules, 1926, is bad in law and cannot be made?"

(28) Shorn of all unimportant details, the contention on behalf of the District Board is that it makes no difference whatever whether an employee of the District Board is temporary or permanent, the District Board has absolute and unfettered authority under rule 1(1) in Part V-A of the District Board Rules to ask the employee to go, on being paid one month's salary or on being given one month's notice. According to the District Board, this is the result, notwithstanding the fact that under term No. 3 of the letter of appointment such an employee is governed by the Civil Services Rules *inter* alia in matters allied to dismissal, etc. According to the appellant, however, this power under the rules aforesaid to discharge a person on giving him one month's notice or similarly to discharge him by giving one month's notice under term No. 4 of the letter of appointment or some similar terms, would make the tenure, of a District Board servant, who is governed by the statutory provisions of the District Boards Act and the statutory rules, i.e., Civil Services Rules, even after confirmation and even after, say he has put in 20 or 30 years service, as precarious as if he was appointed only as a temporary servant of a commercial concern.

(29) It is not disputed and, in fact, it is specifically provided in term No. 3 of the appointment letter that the appellant would be

governed by the Civil Services Rules. Mr. Jagan Nath Kaushal appearing for the appellant urged that in the present case, the appellant is governed besides the Civil Services Rules which have been specifically made applicable to him, by the District Board Rules and by the terms of letter of appointment. He conceded that so long as the appellant was a probationer, according to term No. 6 as well as under the rules governing him, his services could be terminated without assigning any reason, if his work and conduct was not found to be up to the mark by the employer. He, however, urged that once his work and conduct has been found to be satisfactory during his period of probation and he has been specifically confirmed and appointed in a substantive position, then the Civil Services Rules confer on him a "right to hold that post to which he has been confirmed substantively" till any one of the eventualities contemplated by the Civil Services Rules occurs. One of the obvious eventualities of this type would be when such an employee attains the age of superannuation. The second eventuality is contemplated under clause (ii) of rule 5.32 of the Punjab Civil Services Rules, Volume II, read with the note underneath, according to which the "Government retains an absolute right to retire any Government employee after he has completed 25 years of service qualifying for pension if he is holding a pensionable post or has completed service for a similar period if he is holding non-pensionable post, but is entitled to the benefits of Contributory Provident Fund without giving any reasons and no claim to special compensation on this account will be entertained. * * * * *. " In common parlance this is called compulsory retirement of a permanent Government servant. Admittedly the termination of the services of the appellant has not taken place because of anyone of these two eventualities. There are other cases, say, where an employee may be appointed under a contract for a fixed period and he automatically retires at the expiry of that period.

(30) Here I may also deal with the explanation to rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter referred to as the Civil Services Punishment Rules), which form Appendix 24 of the Punjab Civil Services Rules, Volume I, Part II. This rule 4 details the various penalties which may, for good and sufficient reasons, as provided in the subsequent rules, be imposed upon the members of the services governed by these rules. Serial numbers (vi) and (vii) are the punishments of removal and

dismissal respectively, from service. The explanation then details three specific cases in which the "termination of employment * * * does not amount to removal or dismissal within the meaning of this rule * *". Let us examine these three exceptions, because great stress was laid by the counsel for the District Board on these exceptions during the course of arguments.

These three exceptions are as follows:—

(a) "The termination of employment of a person appointed on probation, during or at the end of the period of probation * * * *;"

(31) This clause obviously does not apply to the case of the appellant, because his employment had not been terminated while he was on probation.

(b) "The termination of employment of a temporary Government servant appointed otherwise than under contract, on the expiration of the period of the appointment, on the abolition of the post or before the due time in accordance with the terms of the appointment;"

This exception contemplates three different modes of termination of the appointment, namely:—

(i) on the expiration of the period of appointment;

(ii) on the abolition of the post; and

(iii) before the due time in accordance with the terms of the appointment.

Obviously, the case of the appellant cannot possibly be covered by the first two eventualities, because he was not appointed for a fixed period which had expired and the post which he was holding was not abolished.

(32) The argument, however, was that the employment of the appellant had been terminated "before the due time in accordance with the terms of the letter of appointment which in term No. 4

specifically mentioned that his services were liable to be terminated on being given one month's notice". This argument loses sight of the opening words of clause (b) of the Explanation to rule 4, which is under consideration. This clause opens with the words. "The termination of employment—

(a) * * * * *;

(b) of a temporary Government servant appointed otherwise than under contract ".

Therefore, this eventuality is applicable only to a Government servant who is a temporary Government servant and not appointed under a contract. The case of a person appointed under a contract is dealt with in the third clause, i.e., clause (c) which is to the following effect:—

"(c) of a person engaged under a contract, in accordance with the terms of his contract;"

33. The argument addressed on behalf of the District Board was that the appellant was appointed by means of a letter of appointment (copy Exhibit P-2), referred to above. and, therefore, he is a person appointed under a contract and as such his services were liable to be terminated by giving him one month's notice, because there was a term to that effect in the contract.

(34) This argument, though is very ingenious, on scrutiny is not acceptable. If the word 'contract' is to be interpreted in this manner, then every person is appointed by means of an appointment letter and the terms in the appointment letter have also to be reconciled with the other terms in that contract. In my view if once the Civil Services Rules are made applicable to an employee in his terms of appointment, then, as soon as he is appointed in a substantive capacity, he cannot be treated to be on contractual service in the sense that if it is provided in the terms of the contract that his services would be terminable on one month's notice, his services are liable to be so terminated irrespective of his having become a confirmed hand. It must be made clear here that term No. 4 is ambiguous in the sense that it does not say that the services of the appellant are liable to be terminated on one month's notice even after he has been confirmed.

(35) Now I may also note rules 1, 2 and 7 in Part V of the District Board Rules, 1926. Part V deals with the dismissal of the employees. In substance, rules 1 and 2 provide that no servant of the District Board shall be dismissed, except after an enquiry and after following the procedure laid down therein. There are certain exceptions in which such an enquiry may not be held but we are not concerned with the same. Under rule 7 if the Deputy Commissioner or the Commissioner, if the Deputy Commissioner is a member of the Board, is of the opinion "that the services of an employee of the Board are being adversely affected by such employee being a member of a political organization, the Deputy Commissioner or the Commissioner as the case may be may require the District Board concerned to terminate the services of that employee * * *". This provision is irrelevant for our purposes and need not be referred to. However, the rules in Part V make it clear that, at least, if a District Board servant is to be dismissed, he has to be given a definite charge and an enquiry is to be held.

(36) Now rule 1(1) in Part V-A of the District Board Rules, which is the other plank of the District Board for justifying the discharge of the appellant, runs as follows :—

> "In the absence of a written contract to the contrary every officer or servant employed by a District Board shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged during the period of probation, or for misconduct or was engaged for a specified term and dischargegd at the end of it."

(37) The question is whether this rule gives or clothes the District Board with any specific power to terminate the services of a permanent employee, without following the procedure laid down in Part V, mentioned above, on just giving one month's notice? According to the District Board, this does give such a power. According to the appellant, however, this rule is not meant to clothe the District Board with any such pre-emptory and most unfair power to get rid of a permanent Board servant at the whim of the members of the Board who, it cannot be denied, may be influenced by extraneous matters, including political affiliation of the employee or for various other reasons. One thing is clear that in term, this rule does not

give any such power of discharge to the District Board. All that it does is, leaving out for the time being the opening line, namely, "In the absence of a written contract to the contrary", that it clothes an employee of the District Board with a right to be given one month's notice or one month's pay, before he can be discharged. The wording is "every officer or servant employed by a District Board *shall be entitled.* * * * * *." The words underlined by me above (Italics in this report) leave no manner of doubt that this rule gives a privilege or a right to the officer or servant concerned to say that before he can be discharged, if he can be discharged under the rules, one month's notice or one month's pay must be given to him. The question, under what circumstances and for what reasons he can be discharged, must necessarily be found elsewhere either in the District Board Rules or in the Civil Services Rules. Then, what is the meaning of the opening words "In the absence of a written contract to the contrary"? All that it means is that if it is written in the contract of appointment that the employee concerned would be given more than one month's notice or pay, then he would be entitled to that period rather than the period of one month. Possibly, if in the contract it is written that the Government servant concerned can be discharged without being given any notice, then he shall not be entitled to one month's notice which he otherwise would have been entitled in view of the wording of this rule. The opening words cannot possibly mean anything more than this. If these opening words are to be interpreted to mean that the District Board can, by the terms of the contract, be empowered to discharge a servant, then if there is said nothing in that contract as to for what period notice is to be given, one month's notice has to be given. Even that would not help the District Board. In that case, one would be left only with the terms of the contract and nothing else. It cannot be said that this rule, by itself, gives any power to the District Board to discharge a permanent servant without assigning any reason whatever on just handing him over one month's salary.

(38) In view of the above, I am of the opinion that rule 1(1) in Part V-A of the District Board Rules, clothes an employee with a privilege that he "shall be entitled to one month's notice * * *". However, there are exceptions, which have been detailed in the last part of this rule, when such an employee is not entitled to receive such a notice. These exceptions are—

(i) if he is discharged during the period of probation;

(ii) if he is discharged for misconduct; and

(iii) if he was engaged for a specific term and discharged at the end of it.

As I have already discussed above, the first and the last exceptions do not present the slightest difficulty.

(39) The provisions in the Civil Services Rules and the District Board Rules show that the very idea of probation is that it is a period of trial during which the employer is entitled to watch the work and the conduct of an employee and, in a way, the employee has also an opportunity of seeing the conditions under which he is required to work and during this period of trial, option is left to the employer to discharge the probationer and the probationer has also the option of leaving the service. Similarly, if a person is engaged for a specified term, then he knows from the very beginning that he is to work for a fixed term and, as already discussed above, under clause (c) of the Explanation to rule 4 of the Civil Services Punishment Rules, such a termination does not amount to either removal or dismissal and there is no question of the employee being "entitled to receive a notice". The key to the interpretation is provided by the second exception, i.e., the dismissal. Does this mean that if a person is dismissed, he can be dismissed under this rule and need not be given any notice? Obviously the question of dismissal is already dealt with in the immediate preceding Part V of the District Board Rules. If this rule was meant to give unfettered power of discharge on giving one month's notice, there was no question of mentioning the exception of dismissal. 'Dismissal' has already been dealt with in Part V and certain procedure has to be followed for that purpose. This, to my mind, makes it clear that rule 1(1) of Part V-A was not meant to confer any power on the District Board, apart from that which it possessed otherwise either under the rules or under terms of the contract to discharge a person. As already detailed, the District Board is authorised under the rules to terminate the services of a temporary Government servant; to terminate his services on the expiry of the fixed period for which he is appointed; to terminate his services during the period of probation or to compulsorily retire him under clause (ii) of rule 5.32 of the Punjab Civil Services Rules, Volume II.

(40) A reference, at this stage, may be made to the observations of J. L. Kapur, J. (as he then was), in *Dr. Mukand Lal* v. *The Municipal Committee of Simla* (4). In that case Dr. Mukand Lal was a permanent employee of the Municipal Committee, Simla. His services were terminated under section 45 (1) of the Punjab Municipal Act, 1911. The wordings of this section are *pari materia* and, in fact, almost identical to those of rule 1 (1) in Part V-A of the District Board Rules, and is as follows:—

> "In the absence of a written contract to the contrary, every officer or servant employed by a committee shall be entitled to one month's notice before discharge * * * unless he is discharged during a period of probation, or for misconduct, or was engaged for a specified term and discharged at the end of it."

(41) Dr. Mukand Lal was dischargegd in the purported exercise of the power under the aforesaid section and the matter coming up before a Bench consisting of Harnam Singh and J. L. Kapur, JJ., it was held as follows:—

> "* * * as the grounds of the decision were not announced to the applicant it was not possible for him to shape his appeal under Rule 4 of the rules framed under section 240 (n) of the Punjab Municipal Act and, therefore, the applicant was entitled to a writ of *mandamus*.
>
> * * * the applicant was a permanent municipal servant and his services could not be terminated without observing the procedure provided by rule 3 made on the 17th of February, 1925, and rule 14.13 of the Civil Services Rules (Punjab) read with bye-law 62 of the Simla Municipality."

(42) At page 534 of the report, Harnam Singh, J., *inter alia* observed as follows:—

> "* * * * The fact that in terminating the services of the applicant the Committee decided to pay him one month's wages in lieu of notice does not show that his services were not terminated for misconduct within section 45(1)

of the Act. Clearly, the applicant was discharged for misconduct. If so, the procedure prescribed by rule 3 was to be followed before his discharge for misconduct could be ordered."

The order of discharge, as reproduced at page 531 of the report, was in the following terms:—

"Resolved that (a) under section 45 of the Punjab Municipal Act, 1911, the services of Dr. Mukand Lal, Deputy Superintendent, Ripon Hospital, Simla, be terminated forthwith and he be paid a month's wages in lieu of a month's notice and the Superintendent, Ripon Hospital, should make necessary interim arrangements, and (b) the D.H.S. be requested to lend us the services of a suitable and well qualified P.C.M.S. Officer till we can find a suitable man on contract basis."

Thus there was nothing in resolution indicating that the services were terminated for misconduct. This was apparently inferred by the Bench from the surrounding circumstances. In the present case also we have it on the record that, to begin with, a resolution was passed by the District Board to charge-sheet the appellant and, therefore, the observations made by Harnam Singh, J., at page 534 that the mere fact that the services were terminated on payment of one month's pay "does not show that his services were not terminated for misconduct" may apply also in this case, but that is a matter not before us in the Full Bench and that would be a matter to be decided by the Division Bench, if necessary, whether notwithstanding a simple notice of discharge, really it was a discharge for misconduct. Though Harnam Singh, J., did not make any other observation with regard to the interpretation of section 45(1) of the Punjab Municipal Act, as to whether it conferred any power on the Municipal Committee to discharge a Government servant in a proper case, J.L. Kapur, J., made very clear observations with regard to this matter at pages 549 and 550. This is what the learned Judge, who later on, adorned the Bench of the Supreme Court, observed :—

"I shall now consider the argument which was raised by counsel for the opposite party that section 45(1) gives to the Municipal Committee an unlimited authority to discharge any servant they like provided it is not for misconduct,

No doubt, in section 39 the words used are "suspend, remove, dismiss, or otherwise punish" and the word used in section 45(1) of the Act is "discharged" but this in my opinion is not a section of limitation on safeguards but makes a further provision in favour of the servants. If the Civil Services Rules (Punjab) apply, as indeed they do, then "discharge" in section 45(1) cannot apply to the removal of permanent servants from service. By the extension of the Civil Services Rules (Punjab) to Municipal servants and the rules made under the Municipal Act a protection is given to the Municipal employees against the vagaries of the Municipal Committees who might at any time by the brute forces of majorities try to terminate the services of employees whom they find to be inconvenient or whom they do not like. I do not think that section 45(1) has in any way taken away that guarantee or protection which the law seems to give to all Municipal servants and which the Constitution of India has now given to the Civil servants under the Central Government and the States. Indeed, in democracies it is necessary that servants who have very often to perform unpalatable duties should receive every kind of protection against the tyranny of majorities or the whims of leaders of such majorities and it was for that reason that these rules seem to have been framed and extended to Municipal Committees and there was never a greater necessity for these rules than there is now when everything is governed by force of numbers and very often this force is used without any restraining force."

(43) All that I need say is that, with very great respect, these observations are even far more applicable in the present set up than they were at the time when the same were made. The conclusions of the learned Judge are given at page 550 and for the matter with which I am dealing at present, conclusion No. 4 may be reproduced with advantage, which is as follows :—

"Section 45(1) does not give a free hand to the Municipality to get rid of any servant they like but gives further protection to the servants of the Municipalities;"

Rule 1(1) of Part V-A being in identical words as section 45(1), I am in respectful agreement with the interpretation put by the learned Judge and hold that this rule does not clothe a District Board with

authority to get rid of a permanent servant, but gives only a specific protection to the servants of the Board.

(44) The stage is now set for considering the decision of the Allahabad High Court in *Sharat Chand Misra* v. *The State of U.P. and others* (7), which was dissented from and seversed by a Full Bench of that Court in *Jaganandan* v. *State of Uttar Pradesh and others* (8), basing its decision on the Supreme Court decision in S. R. *Tewari* v. *District Board, Agra* (6) and distinguishing the decision of the Supreme Court in *Moti Ram Deka* v. *North East Frontier Railway,* (3). In *Sharat Chand Misra's case* (7) the appellant was a permanent Secretary of the District Board (later on Zila Parishad), Hamirpur, and his services were terminated by a resolution which was worded in an innocuous manner and this was purported to have been done under rule 3-A of the Rules regarding Officers and Servants of the District Board. This was challenged before a Bench of the Allahabad High Court *inter alia* on two grounds—"(i) that rule 3-A (iv) under which the petitioner's services have been terminated, confers arbitrary powers and is discriminatory and must, therefore, be struck down for contravening Article 14 of the Constitution, and (ii) that the termination of the petitioner's services is a disguised order of punishment vitiated by *mala fides*." As I have already said, we are not concerned with the second attack, because that is a matter to be dealt with by the Bench after the question posed for this Full Bench has been duly answered. Rule 3-A is given at page 42 of the report in *Jaganandan's case* (8) referred to above, and runs as follows :—

"3-A. The period of office of a permanent servant of the board other than a Government servant in its employ shall not determine until—

(i) * * * * * *

(ii) * * * * * *

(iii) * * * * * *

(iv) he has been given by the authority competent to appoint his successor not less than three months' notice or a sum equal to three months' pay in lieu of notice where his pay exceeds Rs. 15, and in other cases not less than one month's notice or a sum equal to one month's pay in lieu of notice."

Sharat Chand Misra mainly relied on the decision of the Supreme Court in *Moti Ram Deka's case* (3) and in that case, before the Supreme Court, rules 148(3) and 148(4) of the Railway Establishment Code were questioned, which were in the following terms :—

"148(3) Other (non-pensionable) railway servants.—The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapicty.

148(4). In lieu of the notice prescried in this rule, it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice. "

The Supreme Court *inter alia* observed at page 748 of the report as follows :—

"The following principles emerge from the aforesaid discussion. A title to an office must be distinguished from the mode of its termination. If a person has title to an office, he will continue to have it till he is dismissed or removed therefrom. Terms of statutory rules may provide for conferment of a title to an office and also for the mode of terminating it. If under such rules a person acquires title to an office, whatever mode of termination is prescribed, whatever phraseology is used to describe it, the termination is neither more nor less than a dismissal or removal from service; and that situation inevitably attracts the provisions of Article 311 of the Constitution. The argument that the mode of termination prescribed derogates from the title that otherwise would have been conferred on the employee mixes up two clear concepts of conferment of title and the mode of its deprivation. Article 311 is a constitutional protection given to Government servants, who have title to office, against arbitrary and summary dismissal. It follows that

Government cannot by rule evade the provisions of the said Article. The parties cannot also contract themselves out of the constitutional provision."

The Bench of the Allahabad High Court in *Sharat Chand Misra's case* (7) felt that "the position of a servant under the District Board Act is not very much different from that of Government servant. Just as in the case of a permanent Government servant, Fundamental Rule 56 prescribes the age of superannuation in the same way in the rules framed under notification No.I-923-A/IX-A-1(22)-67, dated 24th of June, 1968, it has been provided that the age of retirement from service of all employees of the District Board shall be 58 years. This indicates that once a District Board servant is permanently appointed to a post he gets a right to hold the post till the age of superannuation, that is 58 years and termination of his employment before he reaches that age would *per se* be punishment as it entails forfeiture of his rights. In such a case the Regulation regarding dismissal, removal or reduction of officers and servants of the District Board, printed at page 193 of the Manual, comes into operation. According to this Regulation no officer or servant can be dismissed or removed without reasonable opportunity being given to him for showing cause against the action proposed to be taken against him. Rule 3-A printed at page 189 of the Manual, has got to be read along with the Regulation printed at page 193. Whether rule 3-A applies or not it would be necessary to afford a reasonable opportunity to a servant to show cause against the action proposed to be taken against him, in case he is to be dismissed or removed from service. In my opinion, therefore, in a case where the order determining the service of a District Board employee amounts to punishment as it affects his rights to hold the post, it would not be correct to say that the order ceases to be an order inflicting punishment because the employee has been given three months' notice as provided in rule 3-A. In view of the fact that the petitioner had a right to the post of Secretary till he attained the age of superannuation and that right has been effected, the order terminating his services *per se* amounts to punishment. It operates as a forfeiture of his rights by bringing about a permanent end of his employment. It was, therefore, abligatory upon the Zila Parishad to have followed the procedure prescribed for punishing its employees printed at page 193 of the Manual. Petitioner's services could not be determined merely by giving him three months' notice. (See page 635, paragraphs 19 to 21)."

(45) This rule 3-A(iv) came up for consideration before the Supreme Court in *S. R. Tewari's case* (6). Tewari was an engineer of District Board, Agra, which resolved to terminate his services after giving him salary for three months in lieu of notice and served a notice upon him. Having failed in his appeal before the Government against the action of the Board, he filed a petition before the High Court, which was also dismissed. In his appeal before the Supreme Court it was contended that the Board had no power to terminate his services. At page 62 of the report, Shah, J. (as he then was), speaking for the Court observed as follows:—

> "The question which then falls to be determined is whether under the District Boards Act, 1922, the Board is invested with the power to determine employment of a servant of the Board otherwise than by way of dismissal as punishment, and for that purpose certain provisions of the Act and the rules framed under the Act may usefully be referred ...."

Rule 3-A was referred to along with the other provisions of the Act and so was the rule with regard to Regulation relating to dismissal, removal and reduction of officers of the District Board, which provided that no officer or servant shall be dismissed, removed or reduced without a reasonable opportunity being given to him of showing cause against the action proposed to be taken in regard to him. Their Lordships of the Supreme Court made a distinction between "an order of dismissal" and "an order of determination of employment" in rule 3-A in the following words:—

> "An order of determination of employment which is not of the nature of an order of dismissal, has by virtue of the rules framed under clause (d) of section 84 of the U.P. District Boards Act, 1922, to be exercised consistently with rule 3A, and an order of dismissal involving punishment must be exercised consistently with the rule or regulation framed under the Notification dated March 25, 1946, under section 84(b) and (d). We, therefore, hold that the Board had the power to determine the employment of the appellant and the Board purported to exercise that power."

Their Lordships also rejected the other plea that in substance it was intended to exercise the power of dismissal. It was in view of this decision of the Supreme Court in *Tewari's case* (6), that a Full Bench

was constituted for deciding *Jaganandan's case* (8). Reference was made to the Regulation, which according to the learned Judges amounted to a rule framed by the State Government under section 172 of the District Boards Act. This rule provided as follows:—

> "No officer or servant shall ordinarily be retained in the service of the Board, after he attains the age of 60 years, and in no case after he attains the age of 65 years."

Apparently it was urged that this rule gives a lien to a permanent servant on that post in terms of *Moti Ram Deka's case* (3), but this was repelled in the following words :—

> "This rule restricts the right of the Board to retain a servant of the Board or officer after a certain age. It regulates the procedure for granting extension. The various rules framed relating to the servants or officers of the District Board nowhere speak of an officer having a lien on a post or office. *It will be remembered that in Moti Ram Deka's case the Supreme Court spelt out a right to retain the post from the definition of the term 'lien' given in the rules. The right or title was not deduced from the prescription of the age of superannuation.*"

(46) The argument on behalf of the District Board is very simple. *Moti Ram Deka's case* (3) was based merely on the protection given to a Government servant under Article 311 of the Constitution. This has been made very clear in the passage which is quoted above and in several other passages in that judgment. Moreover, as observed by the Full Bench and as was held by the Supreme Court in *Tewari's case* (6) the mere fact that there is a rule or a provision with regard to the retirement of a servant at a particular age of superannuation does not give him "a right to that post" and, therefore, termination of the services of such a person in accordance with rule 1(1) of Part V-A of the Rules, which is more or less similar to rule 3-A in *Sharat Chand Misra* (7) *and Jaganandan's cases* (8) would not amount to removal or dismissal providing any protection, because no protection of Article 311 is obviously available to a District Board servant. To this the reply of the learned counsel for the appellant is that it was *Moti Ram Deka's case* (3) that for the first time brought in the concept of the title of a person to the post if he has a lien on that post. He further

contends that admittedly the Punjab Civil Services Rules are applicable to this case. The word "lien" is defined in rule 2.35 in Volume I, Part I, of the said rules as follows :—

> "2.35. Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively."

It is clear, as was observed by the Supreme Court in *Moti Ram Deka's case* (3) and is not disputed in the present case, that the appellant held a permanent post without any restriction with regard to time. Thus by virtue of the application of the Civil Services Rules, it was urged, the appellant held a lien on the post of Secretary of the District Board, Ferozepur. There can be no dispute so far as this goes. Now, the learned counsel urges that once an employee acquires a lien on the post by being appointed substantively to that permanent post, he acquires a little to that post and the determination of service of such an employee except in the excepted cases of his having attained the age of superannuation or under the rules of compulsory retirement etc., would *per se* be punishment as it results in the forfeiture of his lien and it does not matter what nomenclature is given to such termination and inasmuch as this would amount to punishment, the procedure laid down for dismissal of a permanent servant must necessarily be followed. He quoted at length from the Supreme Court Judgment in *Moti Ram Deka's case* (3) in support of his argument. It is, however, not necessary to deal with those observations or the arguments of the learned counsel in this respect in detail, because one thing is clear that their Lordships of the Supreme Court were dealing with the case of a Government servant who had the protection of Article 311 of the Constitution and, therefore, I do not think it necessary to go into this matter. All that is necessary to examine is whether the appellant can legitimately say, apart from the question of protection of Article 311 of the Constitution, that the District Board cannot terminate his services under rule 1(1) of Part V-A of the Rules, because he has a lien on the post of Secretary, and, therefore, a title to that post. The learned counsel for the appellant has put forward various arguments in support of the contention that under rule 1(1) of Part V-A, the services cannot be terminated of a person who has a lien and title to that post, or, in other words, of a permanent servant of the District Board. *Inter alia* he urged that in fact rule 1(1) of Part V-A is not *pari materia* with rule 3-A of the U.P. District Boards Act with which

the Supreme Court was concerned in *Tewari's case* (6). There the rule definitely provided four different ways in which the services of a permanent servant of the Board could be terminated, and two of them gave option to the employee. The fourth way with which the Court was really concerned, specifically gave power to the District Board to terminate the services of even a permanent servant on payment of three months' salary or one month's salary depending on his monthly pay. Rule 1(1) of Part V-A with which we are concerned is not, in terms, worded to cover persons having a lien on the post. This matter I have already discussed in detail above and have come to the conclusion that this rule does not confer any power on the District Board but gives further protection to the servants of the Board. Consequently, *Tewari's case* (6) or *Jaganandan's case* (8) which is based on *Tewari's case,* (6) has no bearing on the facts of the present case. The only direct case dealing with this matter is *Dr. Mukand Lal's case* (4) in which the observations of J.L. Kapur, J., are directly applicable as already discussed. In the view that I am taking, it is not necessary to discuss the further argument of the learned counsel that it would be fantastic to imagine that by framing rule 1(1) of Part V-A, in such an ambiguous way, the State Government intended to make the tenure of service of a permanent servant of the Board as precarious as that of an employee on probation or a temporary employee, and that even if such a meaning can be attached, then such a construction should be changed by reading words into the rule so as to give effect to the real intention of the Legislature, which could not possibly be that a permanent servant of the Board could be got rid of, at the whim or the changing mood of the elected persons by throwing at him one month's pay. In this connection, he referred to the Supreme Court decison in *Tirath Singh* v. *Bachittar Singh* (17) which related to an election petition and the plain meaning of the section would have led to mainfest injustice, because according to the plain meaning if a finding is to be given of a corrupt practice having been committed even against the petitioner himself, a fresh notice was supposed to be given to him. He also cited AIR 1971 S.C. 530 and other cases, which need not be discussed as according to the view that I am taking, rule 1(1) of Part V-A is not capable of being interpreted as giving any such arbitrary or unfettered power to the District Board to terminate the services of a permanent servant of the Board by just giving him one month's notice.

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(17) A.I.R. 1955 S.C. 830.

(47) The only other point that requires consideration is whether the services of the appellant could be terminated under the terms of the contract of his employment. That to my mind is a very simple matter. All the terms of appointment of the appellant in the letter of appointment, copy Exhibit P.2, have to be read together and reconciled so far as possible. Term 6 provided that he will be considered on six months' probation. Term 3 provided that for the purpose of disciplinary action and other such matters "his services shall be governed by the Civil Services Rules". The result of these two terms read together would be that during the period of probation his services could be terminated without assigning any reason. Another effect of the Civil Services Rules being made applicable to him was that under rule 2.35 of Volume I, Part I, of the said Rules, he would acquire lien on this post on being appointed substantively to it without any fixed, period of time. Thus he would in terms of the Supreme Court decision in *Moti Ram Deka's case* (3) acquire a title to that post. Then there is term 4 of his appointment providing that his services will be terminable on one month's notice on either side provided it will be open to pay the salary for the period by which the notice falls short of one month. This term would certainly be applicable during the period between "the expiry of his period of probation" and "before he is actually confirmed." Till he is confirmed, he acquires no lien and, if he acquires no lien, he has no title to the post and, therefore, this term in the contract, would be applicable to him and he cannot have any grievance if under this term his services are terminated. The question, however, is whether after he has been confirmed and he has acquired a lien and a title to that post, was it the intention of the parties that this term should continue to be applicable, or, in other words, whether such an interpretation that it would continue to be applicable throughout his period of service till his retirement on superannuation, would be consistent with the fact that he holds a lien on a permanent post which ordinarily cannot be terminated except by way of complusory retirement or on attaining the age of superannuation. I am definitely of the view that it would not be so, and this term 4 was applicable only till the time he was not confirmed and not thereafter.

(48) For the reasons given above, therefore, my reply to the question as reframed is in the affirmative, that is, the services of a permanent District Board employee cannot be terminated by giving him one month's notice or pay in lieu thereof in terms of condition 4 of the letter of appointment, copy Exhibit P.2, or under rule 1(1) in

Part V-A of the District Board Rules, 1926, and if so terminated it would be bad in law.

Prem Chand Jain, J.

(49) I have gone through the judgment prepared by my Lord the Chief Justice and also that prepared by my learned brother, B. R. Tuli, J., and with great respect, I agree with the conclusions arrived at by B. R. Tuli, J.

ORDER

(50) By majority, the answer to the question referred to the Full Bench for decision is given in the negative, that is, the termination of services of a permanent District Board employee by giving him one month's notice or pay in lieu thereof in terms of the conditions of his appointment and/or rule 1 in Part V-A of the District Board Rules, 1926, can be made and is not bad in law. The appeal will now go back to the Division Bench for decision on other points involved in the case. It will be open to the appellant to urge before the Bench that the discharge from service, through a camouflage in the language, really amounted to dismissal or removal from service by way of punishment which could not be effected without following the procedure prescribed in the Punishment and Appeal Rules and/or the rules contained in Part V of the District Board Rules, 1926. In view of the difficult nature of the question of law referred to this Bench for decision, the parties are left to bear their own costs of this reference.

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