(1985) 04 MP CK 0009

Madhya Pradesh High Court

Case No: M.P. No. 1505 of 1981

Samaru Das Banjare		APPELLANT
	Vs	
State of Madhya Pradesh and others		RESPONDENT

Date of Decision: April 24, 1985

Acts Referred:

- Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service) Rules, 1960 - Rule 3A

Citation: (1985) JLJ 460 : (1985) MPLJ 361

Hon'ble Judges: G.L. Oza, C.J; Gulab Chand Gupta, J; B.M. Lal, J

Bench: Full Bench

Advocate: K.P. Munshi with Y.K. Munshi and R.N. Roy, for the Appellant; M.V. Tamaskar, Dy. Advocate-General for State and Y.S. Dharmadhikari and D.M. Dharmadkikari, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, C.J.

This petition was heard by learned single Judge who after hearing made a reference to this Bench for answering the following question:

Whether the resolution of the Court Meeting dated 27-2-1981 satisfies the requirement of an otherwise order of the appointing authority by recording reasons in writing as contemplated under Rule 3-A of the Madhya Pradesh Government Servants (Temporary and Quasi- Permanent Service) Rules, 1960?

The facts necessary for consideration in this petition are that the petitioner was appointed as Civil Judge in Madhya Pradesh Judicial Service, Class II, by the respondent State by its order dated 15th July 1976 and he joined the said

assignment on 4th August 1976. The appointment was temporary and on officiating basis for a period of six months for graining and thereafter for a period of two years on probation. It is not disputed that the petitioner completed the training and also the period of probation without any complaint whatsoever. He was, however, not confirmed after the aforesaid period and continued without an order of confirmation or discharge. It appears that on 31st August 1981 (Annexure-D) an adverse confidential report for the period ending 31st March 1981 was communicated to him by the Registrar of this Court earlier as decision had been taken in the full Court meeting held on 27th February 1981 not to confirm the petitioner (Annexure R-1). However, before the above mentioned confidential report could be communicated to the, petitioner, a decision to terminate his service was taken in the Court meeting dated 28th August 1981 (Annexure R-2). Except for the aforesaid adverse confidential report there is nothing adverse against the petitioner. On the contrary, reports of various District & Sessions Judges under whom he had worked showed that his work and conduct was satisfactory. Even the report of the District & Sessions Judge, Jabalpur, who has recorded the adverse confidential report above, shows that his disposal of cases between July to December 1980 was above average and nothing adverse was mentioned against him in the report for the said period. These reports are filed as Annexures C-1 and C-2. In pursuance to the decision taken in the Court Meeting, the impugned order of termination of his employment purporting to be under Rule 12 of the M.P. Government Servants (Temporary and Quasi Permanent Service) Rules, I960, has been passed by the respondent, State Government. Before the learned single Judge, reliance was placed on a Division Bench decision of this Court in Smt. Beena Tiwari v. State of M.P. and another M. P No 61 of 1980, decided on 9th April 1981 where in indentical circumstances the matter was considered and Rule 3-A of the above Rules was considered. The Division Bench decision in Beena Tiwari''s case took the view that Rule 3-A in view of Article 235 of the Constitution could be read as workable if the term appointing authority occurring in this rule is read as competent authority. As under Article 235 the control vests in the High Court, the High Court will be the competent authority and if in Rule 3-A instead of appointing authority, competent authority is read, the rule will be workable and, therefore, it was held that the otherwise order contemplated in Rule 3-A could be the order passed by the High Court. In this decision the Division Bench also took the view that the requirement of the otherwise order as contemplated in Rule 3-A is satisfied when the High Court found the officer not fit for confirmation and it is this which the learned single Judge felt required reconsideration in the light of the language of Rule 3-A as Rule 3-A reads.:

Government servant in respect of whom a declaration under clause (ii) of rule 3 has not been issued but has been in temporary service continuously for five years in a service or post in respect of which such declaration could he made shall be deemed to be in quasi-permanent service unless for reasons to be recorded in writing the

appointing authority otherwise order.

It was, therefore, felt that when the rule specifically requires reasons to be recorded in writing, the resolution merely finding an officer not fit for confirmation will not satisfy the rule. The learned single Judge also felt that otherwise order itself contemplates recording of reasons and, therefore, merely a resolution of the Court saying that a particular officer is not fit for confirmation is not an order which could be justified in view of Rule 3-A quoted above and, therefore, this question was referred to us.

At the time of hearing, learned counsel for the petitioner and also counsel appearing for the High Court and the Deputy Advocate General appearing for the State frankly conceded that in view of the nature of the matter and in view of the fact that this question is of every day occurrence, it will be appropriate to hear the petition itself and not restrict the hearing to the question referred to by the learned single Judge.

Learned counsel for the petitioner contended that although the M.P. Government Servants (Temporary and Quasi-Permanent Service) Rules, I960 have been framed by the Governor of the State exercising powers under Article 309 of the Constitution of India and, therefore, these rules could not be said to be invalid as under Article 309 the Governor of the State has the authority to frame these rules in absence of a statutory enactment passed by the Legislature of the State.

It was also contended by the learned counsel for the petitioner that so far as Rule 3-A is concerned, as the question of confirmation is a matter falling within the ambit of control and in view of the language of Article 235 the control vests in the High Court, the Division Bench was right in reading Rule 3-A in a manner which will make it consistent with Article 235 of the Constitution and, therefore, the view taken by the Division Bench in Beena Tiwari''s case is consistent with Article 235 when it says that in Rule 3-A in place of appointing authority if competent authority is read, it makes it consistent with Article 235 and is workable and it is also contended that this is consistent with view taken by their Lordships of the Supreme Court in All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others,
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As regards the order under Rule 3-A it was contended by learned counsel for the petitioner that Rule 3-A itself contemplated an order in writing with reasons and, therefore, an order merely saying that an officer was not found fit for confirmation will not satisfy the requirement of Rule 3-A. It was also contended that apart from the specific requirement under Rule 3-A for recording of reasons even an otherwise order contemplates a reasoned order and, therefore, to that extent it was contended that the order in the case of the petitioner does not satisfy the requirement of Rule 3-A. It was contended by learned counsel that the decisions have already been considered by the learned Single Judge in the reference order in

support of this view.

Learned counsel appearing for the High Court, on the other hand, contended that Rule 3-A contemplates an order by the appointing authority. The appointing authority in the case of Civil Judge Class II is the Governor of the State. Under the rules framed under Article 309 or under the rules framed under Article 234, the Governor may be the appointing authority, but the question of confirmation is absolutely within the domain of the High Court as has been held by the Supreme Court in a series of decisions and in this view of the matter Rule 3-A being inconsistent with Article 235 is ultra vires and, therefore, cannot be enforced. Learned counsel placed reliance on Hari Datt Kainthla and Another Vs. State of Himachal Pradesh and Others, . State of Assam and Another Vs. S.N. Sen and Another, , The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others, and B.S. Yadav and Others Vs. State of Haryana and Others, . It was contended, therefore, that Rule 3-A will not be applicable but Rule 12 only will be applicable as Rule 12 does not fall within the ambit of control and, therefore, the order could not be said to be dead in law. It was, therefore, contended that the view taken by the Division Bench in Beena Tiwari''s case in reading Rule 3-A by substituting the words competent authority for the words appointing authority is not the correct view as according to the learned Counsel as Rule 3-A runs contrary to Article 235, it can only be held that it will not be applicable in case of judicial Officer as it is in conflict with Article 235. An attempt was also made to suggest that as these rules have not been framed under Article 234 of the Constitution, these rules may not be applicable at all.
Learned Deputy Advocate General appearing for the State contended that the rule of interpretation enunciated by their Lordships of the Supreme Court in The All Saints High School v. Govt. of A.P. lays down that if the rule could be read consistently with Article 235 by substituting the words competent authority for the words appointing authority, the rule could be interpreted to be applicable by such substitution and it was, therefore, contended that the view taken in Beena Tiwari''s case appears to be the correct view.

Learned counsel appearing for the High Court also contended that when the High Court found the petitioner not fit for confirmation, it had before it the record which was considered although there is no reference in the resolution to any part of the record but it was contended that the record could be perused and it will appear that there was sufficient material to find the petitioner not fit for confirmation.

Article 309 empowers the Governor of the State to frame rules in respect of requirement and conditions of service of persons appointed to public service. Article 309 reads:

309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons

appointed to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State of such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

It is not disputed that in the absence of statutory enactment the Governor of the State has authority to frame rules under this Article governing the conditions of service of judicial officers. Article 234 requires that appointments to judicial service of the State other than District Judges would be made by the Government of the State in accordance with rules framed in consultation with the Public Service Commission and the High Court and, therefore, in view of the language of Article 234 an attempt was made to suggest that all these rules framed by the Governor under Article 309 will be ultra vires.

Article 234 of the Constitution reads:

Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

The language of this Article indicates that for appointment of persons other than District Judges to the judicial service of the State, the rules have to be framed by the Governor in consultation with the High Court and the Public Service Commission. Clearly this Article talks of rules for appointment to judicial service other than District Judges but it does not talk of conditions of service whereas Article 309 talks of both recruitment and conditions of service and admittedly the M.P. Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960, are rules pertaining to conditions of service and it is, therefore, apparent that there is nothing inconsistent in these rules with Article 234 and, therefore, the conention that in view of Article 234 these rules will be invalid is of no substance. These rules have been framed under Article 309 and Article 309 quoted above clearly confers jurisdiction on the Governor of a State to frame rules for laying down the conditions of service and, therefore, in absence of statutory enactment these rules could not be said to be invalid.

The other contention advanced by the learned counsel for the High Court was that Rule 3-A which talks of a declaration or in absence of declaration a deeming fiction that be deemed to be a quasi-permanent servant refers to the question of

confirmation and confirmation will strictly fall within the ambit of control under Article 235 of the Constitution. Article 235 of the Constitution reads:

245. The control over district Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

And in this view it was contended that Rule 3-A quoted above is in direct conflict with Article 235 and, therefore, is ultra vires and cannot be applied in cases of judicial service and also in the case of the petitioner. The Division Bench in Beena Tiwari''s case took the view that Rule 3-A could be held to be valid under Article 235 if in place of appointing authority the words competent authority are read and it was, therefore, held that the otherwise order contemplated in Rule 3-A in the case of a judicial Officer will be an order passed by the High Court and not by the Governor, i. e. the appointing authority. In The All Saints High School v. Govt, of A.P. their Lordships considered the rule of interpretation and observed:

It is a well settled rule that in interpreting the provisions of a statute the Court will presume that the legislation was intended to be intra vires and also reasonable. The rule followed is that the section ought to be interpreted consistani with the presumption which imputes to the Legislature an intention of limiting the direct operation of its enactment to the extent that is permissible. Maxwell on Interpretation of Statutes, Twelth Ed., P. 109 under the Caption: ''Restriction of Operation'' states:--

''Sometimes to keep the Act within the limits of its scope, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain purposes only, even though the language expressed no such circumscription of the field of operation.'' ".

The following passage in Bidie v. General Accident, Fire and Life Assurance Corpn. (1948) 2 All E Rule 995 at p 998 was cited with approval in Kesavananda Bharti v. State of Kerala (1973) Supp. SCR 1 at p 101.

''The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacua, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or

modify. It is to read the statute as a whole and ask oneself the question: ''In this state, in this context, relating to this subject-matter, what is the true meaning of that word?

According to Holmes, J. in Towne v. Eigner (1917)245 US 418 : 62 L Ed 372, 376 a word is not crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used. Gwyer, J. in Central Provinces and Berar Act (1939 F C Rule 18 at p. 42) held:

''A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by the considerations arising out of what appears to be the general scheme of the Act.''

To the same effect are the observations of this Court in Kedar Nath Singh v. State of Bihar 1962 Supp. 2 SCR 769.

''It is well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the mischief it seeks to suppress. The Bengal Immunity Company Limited Vs. The State of Bihar and Others, and R.M.D. Chamarbaugwalla v. Union of India 1957 S C Rule 930 cited with approval.''

This Court has been several cases adopted the principle of reading down the provisions of the Statute. The reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It has the principal effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the Court will construe it in a more limited sense so as to keep it within power.

It is in this view of the matter, it appears, that the Division Bench in Beena Tiwari''s case read the term competent authority in place of appointing authority in order to make the rule consistent with Article 235.

In Hari Datt v. State of Himachal Pradesh it is, no doubt, laid down that under Article 235 promotion from one post in the subordinate judicial service to the higher post in the same service is completely within the ambit of the High Court and there is no quarrel with this proposition and even in Beena Tiwari''s case it has been clearly held that the question of confirmation in judicial service is completely within the competence of the High Court under Article 235. State of Assam v. S.N. Sen also is a decision laying down the same proposition that power to confirm and promotion of subordinate Judges vests in the High Court. In this case, Rule 5(iv) of the Assam Judicial Service (Junior) Rules, 1954, was in consideration where the power vested in the Government only for confirmation of a subordinate Judge that this rule was held

to be in conflict with Article 235 and was struck down. In Punjab & Haryana H.C. v. State of Haryana their Lordships were considering Rule 10 of Punjab Superior Judicial Service Rules, 1963, which conferred power on the Governor to confirm the officers in the superior judicial service and this rule was struck down in view of Article 235 of the Constitution. In B.S. Yadav and Others Vs. State of Haryana and Others, their Lordships were considering the rules about seniority and it was held that the Governor had the authority to frame rules but it is the power of the High Court to determine the seniority by applying the rules as it was observed:

As we have said earlier, the mere power to pass a law or to make rules having the force of law regulating seniority does not impinge upon the control vested in the High Court over the District Courts and the Courts subordinate thereto by Article 235. Such law or the rules, as the case may be, can provide for general or abstract rules of seniority, leaving it to the High Court to apply them to each individual case as and when the occasion arises. The power to legislate on seniority being subject to all other provisions of the Constitution, cannot be exercised in a manner which will affect or be detrimental to the control vested in the High Court by Article 235. To take an easy example, the State Legislature or the Governor cannot provide by law or by rules governing seniority that the State Government in the concerned department will determine the seniority of judicial officers of the State by the actual application of the rules of seniority to each individual case. Thereby, the High Court''s control over the State judiciary shall have been significantly impaired. The opening words of Article 309, ''Subject to the provisions of this Constitution'' do not exclude the provision contained in the first part of Article 235. It follows that though the Legislature or the Governor has the power to regulate seniority of judicial officers by laying down rules of general application, that power cannot be exercised in a manner which will lead to interference with the control vested in the High Court by the first part of Article 235. In a work, the application of law governing seniority must be left to the High Court. The determination of seniority of each individual judicial officer is a matter which indubitably falls within the area of control of the High Court over the District Courts and the Courts subordinate thereto. For the same reasons, though rules of recruitment can provide for a period of probation, the question whether a particular judicial officer has satisfactorily completed his probation or not is a matter which is exclusively in the domain of the High Court to decide. That explains partly why in High Court of Punjab & Haryana v. State of Haryana this Court held that the power to confirm a judicial officer is vested in the High Court and not in the Governor.

And in this context it was held that the power to confirm vests in the High Court. It, therefore, could not be disputed that so far as the power of confirmation is concerned, it vests in the High Court and there is no controversy about it. It appears that it is in this view of the matter that the Division Bench interpreted Rule 3-A and in order to make it workable read ''competent authority'' in the place of ''appointing authority'' in Rule 3-A and that view taken by the Division Bench, in our opinion,

does not seem to be unreasonable, and in view of the decisions quoted above, it could not be said to be erroneous. In our opinion, therefore, the view taken by the Division Bench about Rule 3-A that in order to make it workable in case of judicial officers in place of ''appointing authority'' we have to read ''competent authority'' is the correct view.

Rule 3-A, quoted above has used a significant phraseology when it speaks that in the absense of a declaration he shall be deemed to be in quasi- permanent service unless for reasons to be recorded in writing the appointing authority otherwise orders. The words "for reasons to be recorded in writing" and the words "otherwise orders" are very significant in this rule. It was contended that the Court by its resolution dated 27th February 1981 recorded:

SUBJECT No. 8 (iii): Confirmation of Temporary Civil Judges, Class II. FURTHER RESOLVED that the following Civil Judges, Class II, are not found fit for confirmation:

(1) Shri Om Ved Prakash Narayan Chitranshi

(2) Shri Dayaram Singhar

(3) Shri Alexyus Minj

(4) Shri Samarudas Banjare

(5) Shri Shuralal Pargi

(6) Shri Dashraih Prasad Singh Uike.

The significant words are "not found fit for confirmation." It was contended by learned counsel for the High Court that this satisfies the requirement of Rule 3-A i. e. it is an order with reasons and an otherwise order, whereas it was contended by learned counsel for the petitioner that this is only the conclusion, there are no reasons, and reasons and conclusions are two different things. It was contended that when the rule required the reasons to be recorded in writing, the reasons have to be recorded in writing and this order could not be said to be an order where reasons are recorded and, therefore, it could not be said to be an order within Rule 3-A.

It was also contended that apart from the language of the rule about reasons what is stated is "otherwise order" and this phraseology "otherwise order" clearly goes to show that it is an order which affects the rights of a person and, therefore, this itself contemplates application of mind and the order must disclose the reasons for the conclusion which is reached.

It was also contended that when this Court by its resolution found the petitioner not fit for confirmation, there is nothing in the resolution to indicate that the Court considered the matter as to whether the petitioner may not be fit for confirmation but as to whether he could be continued as a quasi-permanent and such a

continuance was not thought to be proper and in this view of the matter it was contended that for the reasons stated above this resolution finding the petitioner not fit for confirmation could not be said to be an ''otherwise order'' within the meaning of the language used in Rule 3-A and it is this, it appears, the learned Single Judge felt deserves consideration of a larger Bench. In Beena Tiwari''s case, so far as this aspect of the matter is concerned, it appears these questions were not raised and, therefore, the judgment does not show any consideration of these questions, as the Division Bench only felt:

It was also argued by the learned counsel for the petitioners that the case of the petitioners was considered by the High Court only for their confirmation and not suitability for employment in a quasi-permanent capacity, when a resolution was passed declaring them to be unfit for confirmation. On this basis, it was argued that the High Court''s resolution could not, therefore, be construed as ''otherwise order'' contemplated by the latter part of Rule 3-A. There is no merit in this contention. The resolution passed in the Court meeting adjudging them not fit for confirmation satisfies the requirement, as continuance in quasi- permanent capacity is included within the ambit of confirmation against the post held by the petitioners.

It appears that the phrase ''for the reasons to be recorded in writing'' and the implications of the words ''otherwise order'' were not placed before the Division Bench and the Division Bench as quoted above felt that the resolution of the Court finding the person not fit for confirmation satisfies the requirement of Rule 3-A. The requirement of giving reasons in the light of the language of Rule 3-A has to be considered in two aspects: first, the statutory requirement, as that is the language of the rule itself, and, second, as a part of the principles of natural justice. As regards the language of the rule ''for reasons to be recorded'', it is settled law that when satisfaction has to be recorded with reasons therefor, mere recording of satisfaction or conclusion as to the existence of the essential conditions is not enough. This has been held by their Lordships of the Supreme Court in a number of decisions,'' viz., The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, , Associated Electrical Industries (India) Private Ltd., Calcutta Vs. Its Workmen, , Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , K. Venkataramiah Vs. A. Seetharama Reddy and Others, , Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, ,Union of India v. M.L. Kapoor A I R 1947 S C 87, Union of India (UOI) Vs. H.P. Chothia and Others, , and Rajamallaiah and Another Vs. Anil Kishore and Others, . In Union of India v. M.L. Capoor (supra) it was observed:

In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record

of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible in-justice and arbitrariness in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with.

In a Full Bench decision of this Court in Ram Natwar Singh v. State of M.P. 1980 M P L J 729, this question of recording of reasons in the context of statutory provision was considered and it was held that unless the statute specifically required the authority to record reasons, there was no mandatory obligation on the authority to do so as the majority view in this case was that rules of natural justice do not extend to recording reasons by the authority but there was no difference of opinion amongst the judges constituting the Full Bench in holding that where a statute required giving reasons, it was obligatory on the part of the authority to do so.

In Gorelal Gupta v. State of M.P. 1984 M P L J 361, a Division Bench of this Court considered this question in the context of section 14 of the M.P. Dakaiti and Vyapaharan Prabhavit Kshetra Adhiniyam, 1981, and held that the District Magistrate was obliged to give reasons which made him think that the property was acquired through commission of specified offences and the owner was unable to satisfactorily account for the same. The Division Bench held that the order of the District Magistrate without disclosing reasons will be bad. Similarly, in Anil Kumar Ojha v, Appellate Authority, District Co-operative Land Development Bank 1984 M P L J 508, a Special Bench of this Court held that where a statutory authority hears an appeal, the appellate authority is bound to pass a speaking order and it was observed that "it is settled that a statutory authority hearing an appeal involving a legal right of a citizen must pass a speaking order."

The application of "the rule of reason" as a part of principle of natural justice was apparently slow and halting in the beginning but seems to have become the well established rule by now. In Bharat Raja Vs. The Union of India (UOI) and Others, , the view taken by the Supreme Court was that the rule requiring reasons to be given is a basic principle of natural justice. This decision was, however, considered by a Full Bench of this Court in Rana Natwar Singh''s case (supra) only to hold that the decision of the Supreme Court in Som Datt Datta Vs. Union of India (UOI) and

Others, was the authority for the proposition that giving reasons was not a requirement of natural justice and since the said judgment was by a larger Bench, it should prevail over Bhagat Raja''s case (supra). This decision, though given in February 1979, did not consider two important decisions of the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Both these decisions dealt with principles of natural justice and gave new direction to the said doctrine. The majority judgment in Maneka Gandhi''s case (supra) deals with not only the principles of natural justice but also the basic requirement of Article 14. Following its earlier view in E.P. Royappa Vs. State of Tamil Nadu and Another, , the Court held that the principle of reasonableness which legally as well as philosophically is an essentially element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. The test of reasonableness as contained in Article 14 of the Constitution was the test of "right, justice and fair" and "not arbitrary, fanciful or oppressive". Dealing with principles of natural justice the Court observed that "the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world." Dealing with the doctrine further, the Court held that it applies not only to quasi-judicial functions but also to administrative functions as both aim at arriving at a just decision. Dealing with audi alterem partem rule, the Court held that whatever be the standard, one essential element of this principle is that the person concerned should have a reasonable opportunity of presenting his case. Whether the opportunity afforded was reasonable would necessarily depend on the practical necessity of the situation. Rule, accordingly to the Supreme Court, is sufficiently flexible to permit modifications and variations to suit to exigencies which may arise. Applying these rules to the provisions of the Passport Act, the Supreme Court held that the passport authority before passing an order impounding the passport of the petitioner was bound to give an opportunity of hearing so that she may present her case and controvert that of the passport authority and point out that her passport should not be impounded. According to the Supreme Court, this should not only be possible but also quite appropriate because reasons for impounding the passport are required to be supplied by the passport authority after making of the order and person affected would be in a position to make a representation stating forth his case and plead for setting aside impounding the passport. The facts of the case clearly indicate that the Central Government not only did not give an opportunity to the petitioner to represent her case but even declined to furnish the reasons for impounding her passport despite request made by her. The Supreme Court held that the Central Government was wholly unjustified in withholding the reasons for impounding the passport from the petitioner and this was not only in breach of statutory provisions but also denial of opportunity of hearing to the petitioner. This, according to the Supreme Court, is a fatal flow in the impugned order. Mohindsr Singh Gill''s case (supra) reviewed the entire law on the subject and summerised the same as under:

Fair hearing is thus a postulate of decision making cancelling a poll, although fair abridgement of that process is permissible. It can be fair without the rules of evidence or forms of trial. It cannot be fair if apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law.

After Maneka Gandhi''s case and the case of Mohinder Singh, there appears to be a continuous flow of cases applying principles of natural justice in quasi-judicial and administrative actions and making the "rule of reason" as a part of principles of natural justice. In AIR 1979 745 (SC) the Supreme Court considered the "rule of reason" in the context of Article 134 of the Constitution read with Supreme Court Rules and following Maneka Gandhi''s case held:

The recording of reasons is usually regarded as a necessary requirement of fair decision. The obligation to give reasons for decision when consequence of wrong judgment if forfeiture of life or personal liberty for long periods needs no emphasis specially when it is First Appeal following upon a heavy sentence imposed for the first time.

In Mahindra & Mahindra Ltd. v. Union of India A I R 1979 S C 798 the Supreme Court considered the monopoly law in this context and held that the "rule of reason" was implicit in the provisions of Monopolies and Restrictive Trade Practices Act, 1969. The Court after considering the law in detail set aside the impugned order as it did not contain any reason. The Court indeed thought that by now it is settled law that an order of an authority must record reasons. The following observations in this regard are relevant:

It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record it reasons in support of the orders it makes. Every quasi-judicial order must be supported by reasons. That is the minimal requirement of law laid down by a long line of decisions of this Court ending with N.M. Desai v. Textile Ltd, Civil Appeal No 245 of 1970, 17-12-1975 and The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, .

Siemens Engineering case (supra) is accepted as the leading authority for the proposition that decisions of quasi-judicial authorities must contain reasons. It was in this case that the Supreme Court held that--

The rule requiring reasons to be given in support of an order is, like the principle of audi alterem partem, a basic principle of natural justice which must inform every quasijudicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

Though the Full Bench of this Court in Ram Natwar Singh''s case (supra) did not rely on this decision in view of the earlier decision in Som Datt''s case (supra), it is

apparent that the Full Bench''s process of reasoning is not followed by the Supreme Court. The Bench deciding Mohinder Singh Gill''s case (supra) was the larger Bench than the one which decided Siemens Engineering case and hence this should satisfy the only objection of the Full Bench. It is well settled that if the two Benches of the Supreme Court take different view of law, it is the latter view which is accepted as the correct view. This by itself should be sufficient to hold that the Full Bench''s decision of this Court in Rana Natwar Singh''s case does not contain the correct law on the subject. This position remains well established even by subsequent decisions of the Supreme Court. In Organo Chemical Industries v. Union oj India A I R 1979 S C 1803 the Supreme Court while considering the provisions of Employee''s Provident Funds and Miscellaneous Provisions Act, 1952 held that even in the absence of a clear provision in the statute the same cannot be accepted as void as "the Regional Provident Fund Commissioner has not only to apply his mind to the requirements of section 14B but is cast with the duty of making a ''speaking order'' after conforming to the rules of natural justice" (Para 40). To the same effect is the decision in Rama Varma Bharathan Thampuram Vs. State of Kerala and Others, wherein the Court took the view that the Board created under Kerala Act No. 15 of 1978 being a statutory body would act quasi-judicially and comply with the principles of natural justice which would include "reasons to be written for conclusions made" (Para. 14). The aforesaid catena of cases sufficiently establish that the "rule of reason" is the integral part of principles of natural justice which a statutory authority is required to observe even in the absence of as provision in the statute in that behalf. The Full Bench decision in Rana Natwar Singh''s case (supra) to the extent it holds to the contrary must, therefore, be held to be no longer a good law. Indeed, the decision in Rana Natwar Singh''s case does not seem to have been followed in any subsequent decision of this Court and almost all reported cases treat the rule of reason to be a part of principle of natural justice (see A was Ahat Griha Nirman Sahakari Samiti Maryadit v. State of Madhya Pradesh 1984 M P L J 602 Gorelai Gupta v. State of M.P. (supra), Biharilal Tikaram v. Govt, of M.P. 1983 M P L J 553 Nandakishore Vs. State of M.P., and Banamani Prasad v. Slate of M.P. 1980 M P L J 34). The aforesaid review of law should sufficiently indicate that the decision of this Court in Suresh Seth v. State of M.P. 1969 M P L J 327 lays down the correct law on the subject and remains vibrant even today.

The question, however, is whether what has been recorded in the resolution of the High Court can be said to be ''reasons'' wituin the meaning of this rule? The distinction between "reasons" and "conclusions" has been brought out by the Supreme Court in M.L. Capoofs case (supra). Reasons, according to the Supreme Court, are the links between the materials on which certain conclusions are based and the actual conclusions. The Supreme Court considered the matter in the context of Articles 14 and 16 of the Constitution and held that:--

It was incumbent on the selection committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to

records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against the possible injustice and arbitrariness in making selections.

The Supreme Court further held that reasons disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-Judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. This decision was followed by the Supreme Court in Gurdial Singh Fijji Vs. State of Punjab and Others, . The following observations of the Supreme Court in this judgment are relevant for our enquiry and are, therefore, reproduced:--

That an officer was ''not found suitable'' in the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List. In the absence of any such reason, we are unable to agree with the High Court that the Selection Committee had another ''reason'' for not bringing the appellant on the Select List.

In a recent judgment of this Court in Gorelal Gupta''s case (supra) the Division Bench of this Court has considered the distinction between "reasons" and "conclusions" and has held that--

If there is no rational and intelligible nexus between reasons and beliefs, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be that the District Magistrate had no such reason to think.

If facts of the present case are considered in the context of the aforesaid law, there would be no escape from the conclusion that what has been recorded by the High Court in its resolution is not the "reason" within the meaning of Rule 3-A of the Rules but is the "conclusion" of the High Court. The words "not found fit for confirmation" used in the resolution cannot serve as the "link" between the material on which this conclusion is based and the actual conclusion Under the circumstances, it is not possible to agree with the learned Counsel for the respondents that the resolution of the High Court records reasons and satisfies the mandatory requirement of the rules. It must, therefore, be held that the mandatory requirement of the rule remains violated in the present case.

We may also consider whether the resolution of the Court can be accepted as the "otherwise order" of the "competent authority". These words will have to be read in the context in which they appear. The context clearly indicates that in case no order is passed by the Competent Authority, the Government servant would be deemed to have acquired the status of quasi-permanent Government servant. An "otherwise order" in this context would mean an order arresting the effect of this deeming

provision. The prder must, therefore, indicate how a Government servant would not become a quasi-permanent servant within the meaning of this rule, in spite of his remaining in temporary service continuously for five years. The resolution of the Court does not even prima facie indicate that the Court considered the petitioner''s acquisition of quasi-permanent status. The resolution only finds him ''unfit for confirmation'' and does not prevent him from acquiring quasi permanent status. Indeed, the person may not be considered fit for confirmation but may also not be considered bad for continuing in service. In such a situation, the competent authority is required under this rule to consider if he can be permitted to acquire quasi-permanent status. Consideration for this purpose would be different from the consideration for confirmation, and the Competent Authority in some conceivable case may permit a Government servant to acquire quasi-permanent status, even while finding him not fit for confirmation. Clearly, therefore, the resolution of the High Court cannot be accepted as an "otherwise order" satisfying the requirement of Rule 3-A of the Rules. This aspect of the matter was not placed for consideration of the Division Bench deciding Beena Tiwari''s case and hence there is nothing in the said judgment to justify a contrary view. As a necessary logical consequence of this finding, the petitioner must be deemed to have acquired the status of quasi-permanent servant and his services could not be terminated by an order under Rule 12 of the Rules.

This brings us to the last and important submission of the learned counsel for the respondent. The learned counsel contended that although "reasons" may not have been recorded in the Court resolution but at the time of passing the resolution the service record of the petitioner was before the Court and was examined for the said purpose. The learned counsel offered to produce the record for scrutiny of this Court so that this Court may examine the record and come to its own conclusion. The prayer, in other words, is that even though the High Court failed to record reasons as required by Rule 3-A of the Rules, this Court should supply the omission and up hold the order. It has not been possible for us to accede to this request as the resolution does not refer to any record nor states the circumstances which have been taken into consideration. Then, in the absence of these vital details, it is not possible for this Court to know what has weighed with the Honourable Judges when they passed the resolution in question. Indeed, such a course is not permissible in law as would be clear from the following observations of the Supreme Court in Mohinder Singh''s Gill''s case (supra):

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order had in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

''Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.''

Orders are not like old wine becoming better as they grow older.

In this context we cannot also ignore the fact that only material stated in the return is an adverse remark and nothing else. Admittedly, the adverse remark referred to in the return pertains to a period subsequent to the passing of the resolution and is, therefore, irrelevant.

As a result of the discussion aforesaid, the petition succeeds and is allowed. The impugned order of termination of the petitioner dated 19th November 1981 is quashed. As a necessary consequence the petitioner would be deemed to be continuing in his employment and be entitled to all benefits including salary etc. on the assumption that the order of termination has not been passed. Parties are directed to bear their own costs. The security amount, if deposited, be refunded to the petitioner.