(1983) 07 CAL CK 0021

Calcutta High Court

Case No: C. R. No. 56 (W) of 1981

Ganesh Chandra Mukherjee		APPELLANT
	Vs	
National Textile Corpn. (West Bengal, Assam, Bihar and Orissa) Ltd. and Others		RESPONDENT

Date of Decision: July 18, 1983

Acts Referred:

- Constitution of India, 1950 - Article 12, 311

Citation: 86 CWN 960

Hon'ble Judges: G.N. Roy, J

Bench: Single Bench

Advocate: Nani Coomar Chakraborty and Ramendra Kumar Mukherjee, for the Appellant;Parth Sarathi Sengupta and Dipak Ghosh, for the Respondent

Final Decision: Allowed

Judgement

G.N. Roy, J.

This Rule is directed against the order of termination of service of the petitioner with effect from 10th December, 1980 issued by the respondent No. 5, viz. the Chairman-cum-Managing Director of the N. T. C (WBABO) Ltd. The petitioner was initially appointed in Hindusthan Steel Ltd., Durgapur and was ultimately promoted as Senior Administrative Officer. Later on, the petitioner went on deputation to the National Textile Corporation Ltd., but the petitioner was assured to be permanently absorbed if the petitioner would desire to remain in the National Textile Corporation Ltd. The Hindusthan Steel Ltd. thereafter asked for option of the petitioner on condition that the petitioner would be absorbed permanently in the National Textile Corporation Ltd. and if the petitioner would opt for such absorption, the Durgapur Steel Plant would not take back the petitioner after the expiry of the period of deputation. On such condition, the petitioner consented to go on deputation to N. T. C. and his last pay certificate was issued by the Hindusthan Steel Ltd. It appears that

the petitioner was initially appointed as Manager, Centralised Purchase Division with effect from 27th August, 1976 under the N. T. C. (West Bengal, Assam, Bihar & Orissa) Ltd. The post of the petitioner was thereafter upgraded and the petitioner was later on promoted as General Manager of the constituent unit of Banga Laxmi Cotton Mills. The said post of the General Manager was redesignated as Chief Executive Officer. It appears that the petitioner was sent to attend the course of general management for senior executives at the Administrative Staff College of India at Hyderabad. Later on, the petitioner was transferred to Headquarter as Officer on Special Duty for assisting the Chief Technical Officer. The petitioner was thereafter appointed as Chief Executive Officer of Sodepur Cotton Mills and in addition, the petitioner was also appointed Convenor of the committee to investigate into the complaints on civil works at Banga Laxmi Cotton Mills. It appears the petitioner was also appointed as Chief Executive Officer of Bangashree Cotton Mills in addition to Sodepur Cotton Mills and thereafter he was also appointed as Chief Executive Officer of Gaya Cotton and Jute Mills in addition to Sodepur Cotton Mills and Bangashree Cotton Mills. It is the case of the petitioner that the Managing Director of the respondent No. 2 viz. the National Textile Corporation Ltd. which is the holder company of the National Textile Corporation (West Bengal, Assam, Bihar & Orissa) Ltd. held a review meeting at Calcutta relating to the affairs of the N. T. C. (WBABO) and Mr. S. K. Banerjee, the Chairman-cum-Managing Director of the N. T. C. (WBABO) became annoyed with the petitioner for certain statements made by the petitioner to the Managing Director of the said holding company in the said review meeting. The petitioner has alleged the said Chairman-cum-Managing respondent No. 5, expressed his anger for the statement by the petitioner in the review meeting and asked the petitioner to voluntarily resign otherwise he was theatened to be teased out. The petitioner contends that on 26th June, 1980 the petitioner was asked to concentrate four days at Gaya Cotton and Jute Mills at Gaya and two days at Bangashree Cotton Mills in a week and the charge of Sodepur Cotton Mills was taken off from the petitioner. As it was difficult for the petitioner to stay four days at Gaya for looking after the Gaya Cotton and Jute Mills and two days in Calcutta for looking after the works of Bangashree Cotton Mills every week, the petitioner prayed for a month''s leave, but such leave was not granted to the petitioner. The petitioner thereafter on 12th December, 1980 applied for sick leave from the said date from his residence and sent copies to Bangashree Cotton Mills. The petitioner contends that the petitioner apprehended vindictive action on the part of the Chairman-cum-Managing Director of the N.T.C. (WBABO). The petitioner wrote each of the Directors of the N.T.C. (WBABO) and also the Managing Director of the holding company for restraining the said respondent No. 5 from taking any action against the petitioner until such opportunity would be given to the petitioner. It, however, appears that on 10th December, 1980, the respondent No. 5 viz. The Chairman-cum-Managing Director of the N. T. C. (WBABO) passed an order of termination of the petitioner with immediate effect by forwarding a cheque giving 3 months salary in lieu of notice. As

aforesaid, the said order of termination passed against the petitioner is the subject matter of challenge in the instant Rule. The petitioner contends that the said order of termination is in effect an order of dismissal and removal from service and the same had been passed by the respondent No. 5 malafide and arbitrarily, without any reason whatsoever and in violation of the condition of the service by which the employer is bound. The petitioner also contends that the Chairman-cum-Managing Director had no jurisdiction to pass the order of termination against the petitioner. It is contended by the petitioner that the petitioner is a permanent employee of the National Textile Corporation (West Bengal, Assam, Bihar & Orissa) Ltd. and as such the petitioner has a right to remain as an employee of the said N.T.C. (WBABO) Ltd. until he attains the age of superannuation as per service rules. It is contended by the petitioner that removal, discharge and or dismissal are major penalties under the rules of service of the N.T.C. (WBABO) Ltd. and the impugned order of termination which is nothing but removal from service is a major penalty but the same has been passed exparte without initiating any disciplinary proceedings and without giving the petitioner any opportunity of being heard. The petitioner also contends that there was no contract of employment with the petitioner and the N.T.C. (WBABO) but such contract was made with the holding company viz. N.T.C. Ltd. and as such the Chairman-cum-Managing Director of the N.T.C. (WBABO) had no authority to pass the impugned order of termination against the petitioner in any event. The petitioner further contends that even assuming that the petitioner''s employment was with the N.T.C. (WBABO), it is the Board of Directors and not the Chairman-cum-Managing Director which was competent to pass the order of termination or dismissal of service of the petitioner. The petitioner contends the petitioner was originally an employee of the Hindusthan Steel Ltd. and it was agreed with the holding company at Delhi that the petitioner should be sent on deputation if the petitioner would be absorbed permanently in the N.T.C. Accordingly, the petitioner exercised his option. It is immaterial as to whether the petitioner''s service was utilised by the subsidiary company viz. N. T. C. (WBABO). According to the petitioner, he was absorbed by the holding company and as such the order of termination cannot be made by the subsidiary company. In support of the petitioner''s contention that it was the Board of Directors and not the Chairman-cum-Managing Director which is competent to pass the order of termination against the petitioner, the petitioner has contended that under Regulation 21 of Rule 93 of the Articles of Association of N. T. C. (WBABO), the Board has power to terminate the service of certain categories of employees to which the petitioner belonged. Accordingly the Chairman cum-Managing Director had no authority to terminate the service of the petitioner and the purported order of termination of service must be held to be void and without jurisdiction. It may be noted here that initially about the maintainability of this writ petition by the petitioner against the order of termination, a preliminary objection was raised on behalf of the N.T.C. (WBABO) and the Chairman-cum-Managing Director of the N.T.C. (WBABO). After a prolonged hearing, this Court has decided that against

illegal and arbitrary order of termination of service of the petitioner who was an employee of the Government Company which is an instrumentality or agency of the Central Government and as such ''State'' within the meaning of Article 12 of the Constitution, the petitioner was entitled to challenge the validity of the order of termination in a writ proceeding. Accordingly, the Rule was set down for hearing on merits.

2. The petitioner contends that the impugned order of termination was passed arbitrarily and capriciously by the Chairman-cum-Managing Director of the N.T.C. (WBABO) without any just cause and such order was passed in contravention of the service rules of the petitioner. Mr. Chakraborty, the learned Counsel for the petitioner has contended that removal and or dismissal from service is a major penalty and for imposing major penalty, a disciplinary proceeding is required to be initiated. No such proceeding had ever been initiated against the petitioner and the impugned order of termination has been passed exparte. The said order of termination is nothing but an order of dismissal or removal from service. Accordingly, the same must be held to be illegal and without jurisdiction.

3. Mr. Sengupta, the learned Counsel appearing for the respondents, has contended that the right to effect termination simplicitor is an inherent right of every employer, whether a service regulation expressly provides for such termination or not. Unless such a right is read to exist with the employer it will be impossible to run the management because in many cases though the employer on cogent material not amounting to misconduct decides to get rid of an employee it will not be able to do so and further in cases when the employer loses confidence in an employee on cogent reason but in reality it is not possible to establish the misconduct of the concerned employee, the employer will be forced to retain such employee. Mr. Sengupta has contended that such inherent right can only be taken away by an express condition of service. Mr. Sengupta has also contended that the service regulation controls the terms and conditions of the employee dealing with the procedure and manner of disciplinary proceedings but such regulations do not take away the right of the employer to terminate the service of the employee. Mr. Sengupta has contended that every contract of service is terminable by giving reasonable notice and what constitutes a reasonable notice varies from case to case. In the instant case, three months salary in lieu of notice has been given and as such the notice is quite reasonable and it is also not contended by the petitioner that the period of notice is not reasonable. In this connection, Mr. Sengupta has referred to a decision made in the case of Richardson v. Keofod reported in 1963(3) All England Reporter, page 1264. Lord Justice Denning has held in the said case that in the absence of express stipulation, service is terminable after reasonable notice and the length of notice for such termination depends on the facts of the case. Mr. Sengupta has also contended that while disposing of the preliminary objection about the maintainability of the writ petition, this Court has decided that "if the petitioner can establish that the orders of dismissal or removal have been passed arbitrarily and

without any reason and in violation of condition of service by which the employer is bound then the writ Court can pass appropriate direction". Mr. Sengupta has submitted that in the instant case, no order of dismissal or removal of service has been passed against the petitioner but the impugned order is the order of termination simplicitor. Accordingly, such order of termination simpliciter is not on any ground of misconduct and as such the same is not governed by any service regulation. He has contended that in the instant case on review of the total performance of the petitioner it was thought fit that the petitioner''s retention in service will be prejudicial to the interest of the organisation. In this connection he has referred to confidential note given in Annexure ''B'' to the affidavit-in-opposition. He submits that the said confidential note reveals a cogent reason for holding that the petitioner''s retention in the service will be prejudicial to the interest of the organisation. Mr. Sengupta has contended that if it is reasonably possible to come to such a decision then the adequacy or sufficiency of the said reason is beyond the pale of scrutiny by the Writ Court and the action taken being based on some cogent reasons, the same cannot be termed as "arbitrary or without any reason". Accordingly no interference by the Writ Court is called for. In support of the said contention, Mr. Sengupta has referred to a decision of the Bombay High Court made in the case of Monohar P. Kherwhar v. Raghuraj reported in 1981(2) L.L.J, page 459. In the said case termination of service under Regulation 48 of the Air India Employees'' Service Regulation was effected. It has been held in the said decision that the petitioner has no right to hold the post for a number of years and in the absence of abuse of power, holding of enquiry is not a ''must'' and as such the question of colourable exercise of power does not arise. It has been further held that even assuming that the termination of service of the concerned employee was for his misconduct, the alleged misconduct could not be said to be motive and the foundation of the order of termination. Such termination was passed on the ground of unsuitability to retain the said employee in the service. Mr. Sengupta has next contended that since the petitioner has thrown challenge about the legality of the said order of termination and has contended that such order of termination has been passed malafide without any reason whatsoever, the respondents have disclosed the reasons in the affidavit-in-opposition. But simply because the reasons have been disclosed to justify the action taken against the petitioner, it cannot be contended that the employer was bound to hold an enquiry before passing the impugned order of termination simplicitor. Mr. Sengupta has contended that the petitioner cannot be permitted to take advantage of non-disclosure of the reasons in the order of termination simplicitor. He has contended that in the order of termination simplicitor, no reason is required to be given and if any imputation of misconduct is given in such order of termination then the same does not remain to be an order of termination simplicitor. Mr. Sengupta has contended that the Court should look to the order and ascertain as to whether on the face of the order, the order is an order of termination simplicitor or not.

4. Mr. Sengupta in answer to the contention raised by the petitioner that the order of termination was passed malafide by the Chairman-cum-Managing De-rector has contended that the onus to establish malafide lies heavily on the petitioner and mere allegation of malafide on the part of the employer is not sufficient to get relief. Even assuming that the Chairman-cum-Managing Director was harbouring grudge and or malice, against the petitioner and had been proceeding malafide against the petitioner, the petitioner will not be entitled to get any relief unless he establishes that the order of termination is outcome of such malafide action. The respondents have denied and disputed any malice on the part of the respondents. In this connection, Mr. Sengupta has referred to the decision of the Supreme Court made in the case of The State of Haryana & Ors. vs. Rajendra Sareen reported in 1972 S. C. page 1004. It has been held in the said decision that the High Court should consider all the allegations of malafide to find out whether such allegations have been established and whether the impugned order is the result of such malice or ill-will. Mr. Sengupta has contended that if the misconduct is not the basis or the foundation of the order of termination, the order of termination remains an order of termination simplicitor and it is not necessary to enquire into the motive because motive is usually irrelevant if the misconduct is not the basis of termination. In support of his contention, Mr. Sengupta has referred to the decision of the Supreme Court made in the case of R. S. Sial vs. The State of Uttar Pradesh & ors. reported in AIR 1974 S.C. page 1317 and the decision made in the case of The State of U.P. Vs. Ram Chandra Trivedi, . Mr. Sengupta has contended that no employee other than those enjoying protection under Article 311 of the Constitution and those enjoying protection under the Industrial Law or any other Statute, enjoys any security of tenure of service and as such the service of such employee can be terminated under the ordinary law of master and servant without the existence of misconduct in suitable cases. Mr. Sengupta has contended that the petitioner has claimed a right to continue in service until he attains the age of superannuation viz. 58 years. He has, however, submitted that such right to continue in service until the employee attains the age of superannuation is subject to the inherent right of the employer to terminate the service on the ground of un-suitability. He has submitted that in Manohar P. Kherkhar''s case (Supra) the Division Bench of the Bombay High Court after taking into consideration the submission that the employees are entitled to remain in service till the age of retirement, has accepted the contention of the employer that the legislature can be said to have recognised the employer''s right to terminate the employee''s service under the ordinary law of master and servant without the existence of misconduct in suitable cases and no employee can claim for any service tenure for a particular number of years or security thereof excepting when the same is protected by the provisions of Article 311 of the Constitution or under some legislation. Mr. Sengupta has contended that it is the positive case of the petitioner that the petitioner made representations to each of the members of the Board of Directors, but even then when the matter of termination was reported to the Board of Directors, no objection was raised by any member of the Board of

Directors and the said fact also establishes that the Board of Directors has approved the said action of termination of service. There is no allegation of malafide against any member of the Board of Directors. Accordingly, acceptance of the order of termination by the Board of Directors when the matter was referred to the Board of Directors must be held to be a valid order of termination. Mr. Sengupta has contended that the order of termination on the face of it does not contain any stigma against the petitioner and when on the face of it the order it does not contain any stigma on the employee, there is no presumption that the order is arbitrary or malafide unless a very strong case is made out and proved by the employee who challenges such an order. For this contention, the decision of the Supreme Court made in the case of State of Maharashtra vs. Veerappa R. Soboji & Anr. reported in AIR 1980 S. C. page 42 was cited by Mr. Sengupta. It may be noted in this connection that in order to establish malafide and the malice on the part of the Chairman-cum-Managing Director of the N. T. C. (WBABO), the petitioner has referred to the confidential note which was sent to all C. E. Os.|P. Ms|F. Ms in West Bengal Unit. The petitioner has also stated that the petitioner was asked to inform as to whether or not the petitioner had discussed the matter with C. T. A. and P. M. D. before entering into the agreement. The petitioner has also referred to a letter by which the petitioner was advised to submit the Returns to the Manager (Vigilance) within seven days from the date of the receipt of the memo and the petitioner was reminded that failure to do so would constitute a misconduct. Mr. Sengupta has contended that the confidential note was sent to all the C.E. Os|P. Ms|F. Ms and it was not meant for the petitioner only. Hence it cannot be contended that the said confidential note really amounted to show cause notice for any lapse or misconduct on the part of the petitioner. He has also contended that by asking the petitioner to inform as to whether or not he had discussed with C.T.A. and P.M.D. on certain issues, it cannot be contended that such enquiry amounts to a show cause notice. Mr. Sengupta has contended that the petitioner was asked to submit Returns to the Manager (Vigilance) within seven days and the attention of the petitioner was drawn that failure to submit such Returns constitutes misconduct. No action has been taken in respect of any such return and as such the question of malafide does not arise so far as the impugned order is concerned. Replying to the contention raised by the petitioner that the Chairman-cum-Managing Director was not competent to pass any order of termination or removal of the petitioner, Mr. Sengupta has contended that under Article 87(A) of the Articles of Association of N.T.C. (WBABO) "the Board of Directors may from time to time empower the Chairman-cum-Managing Director to exercise such powers as they think expedient and from time to time may revoke, withdraw, alter or vary all or any such powers." Such power is impliedly given when the Board of Directors framed the Conduct, Discipline and Appeal Rules and in the schedule to the said Rules the Chairman-cum-Managing Director was shown as the appointing authority in respect of certain officers like the petitioner. Mr. Sengupta has, therefore, contended that the power to terminate the service has, therefore, been impliedly given to the

Chairman-cum-Managing Director because he was shown as the appointing authority. Mr. Sengupta has contended that the Chairman-cum-Managing Director being the appointing authority under the said Discipline and Appeal Rules must have all the powers of the appointing authority including the power of termination. He has, however, contended that in the instant case, in the 29th meeting of the Board of Directors held on 26th May, 1979, the Board of Directors expressly delegated such power to the Chairman-cum-Managing Director in the following words:

Notwithstanding anything contrary to the provisions in the administrative order, rules etc. Chairman-cum-Managing Director may resort to terminate the service of any officer by the way of discharged simplicitor as per the terms of appointment provided he is satisfied that such action is absolutely and immediately necessary in the interest of the Company and thereafter, he will report the same to the Board at its next meeting.

5. Mr. Sengupta has contended that the termination of the petitioner was reported to the Board in its 40th meeting held on 5th February, 1981 and it appears from the minutes of the said meeting that the Chairman-cum-Managing Director had reported that the contract of employment of Sri G. C. Mukherjee had been determined in the interest of the Corporation. He, therefore, contends that the action of termination of service effected by the Chairman-cum-Managing Director must be held to be in accordance with law and the Chairman-cum-Managing Director was competent to effect such termination. Mr. Sengupta has also contended that no member of the Board of Directors objected to the said order of termination effected by the Chairman-cum-Managing Director when the matter was reported to the Board in the said 40th meeting of the Board of Directors. It therefore must be held that the Board has also ratified the action and in the circumstances no exception can be taken to the order of termination. It may be noted in this connection that the petitioner has also alleged that at no point of time the order of termination has been served on the petitioner and as such the said order of termination cannot be given effect to. Mr. Sengupta has contended that the petitioner admittedly has come to know of the said order of termination and has annexed it to the writ petition and the respondents have really passed such order of termination.

6. In reply to the aforesaid contentions made by Mr. Sengupta appearing for the respondents, the learned Counsel for the petitioner has contended that in public employment the absolute right of the master to terminate the service of the employee at its will is not applicable. An employee in the public employment has got enough security and protection of his service and in all the recent decisions of the Supreme Court and various High Courts, such security in the public employment has been recognised. The hire and fire theory in a private employment is not applicable to public employment and termination simpliciter may be made in an appropriate

case without following any disciplinary proceeding provided such termination is made for a just cause and the same does not come in conflict with the conditions of the employment of the concerned employee serving under a public body. The N.T.C. (WBABO) is undoubtedly a Government Company and a ''State'' within the meaning of Article 12 of the Constitution Accordingly, for mere subjective satisfaction of the Chairman-cum-Managing Director, an order of termination cannot be passed. The petitioner opted to join the N.T.C. on an express condition that the petitioner would be permenently absorbed in the N.T.C. As such, the petitioner can legitimately claim to continue in service until he attains the age of superannuation. The respondents failed to establish by any cogent material before this Court that the petitioner''s continuance in service was detrimental to the interest of the Company and as such there was sufficient objective basis for passing the order of termination simpliciter without starting a disciplinary proceeding against the petitioner. The learned Counsel for the petitioner has also contended that simply because in the Conduct, Discipline and Appeal Rules framed by the Board of Directore the Chairman-cum-Managing Director was shown as the Appointing Authority of the officers of the company like the petitioner, it cannot be held that by necessary implication the Chairman-Cum-Managing Director was the appointing authority of the petitioner. Even in the said National Textile Corporation (WBABO) LTD. Employees Conduct, Discipline and Appeal Rules, 1976, no definition of Appointing Authority has been given and only in Rule 3(f), Disciplinary Authority has been defined as the Authority specified in the Schedule appended to these rules and competent to impose any of the penalties specified in Rule 23. Appellate Authority and Reviewing Authority have also been defined in Rules 3 (1) and 3 (j) respectively. The schedule to the said Rules must be read only in the context of a disciplinary proceeding and not as an independent provision for an appointing authority more so when under the said Regulation 21 of Rule 93 of the Articles of Association the Board is the appointing authority. Even assuming that for the purpose of a disciplinary proceeding the Chairman-cum-Managing Director will be treated as the appointing authority with consequential power to dismiss, no disciplinary proceeding having been started against the petitioner, the Chairman-cum-Managing Director could not pass the order of termination against the petitioner. The learned Counsel for the petitioner has also contended that if the Chairman-cum-Managing Director has no authority to terminate the service, the order is void ab-initio and the fact that the matter was reported to the meeting of the Board of Directors cannot validate the said void order.

7. After considering the respective submissions made by the learned Counsels appearing for the parties, it appears to me that although Article 311 has not been made applicable to the employees of the Government Company, Public Undertaking and Autonomous Bodies and Corporations which are instrumentalities of the State or the Central Government and as such State within the meaning of Article 12 of the Constitution such employees certainly enjoy considerable protection in the matter of

their employment and an employee of a Public Undertaking etc. which is a ''State'' within the meaning of Article 12 of the Constitution, cannot be terminated on the mere subjective satisfaction of the concerned authority. Any arbitrary or capricious action taken by an authority in such Public Undertaking etc. against any employee of such Undertaking can be questioned in a writ proceeding and if such action is contrary to the service conditions and or the rules framed therefor and or is passed arbitrarily, capriciously and without following the principles of natural justice the same can be quashed in the writ proceeding. In the instant case, the respondents have failed to produce any cogent material on the basis of which an order of termination simpliciter against the petitioner can be reasonably passed on an objective basis. It appears to me that such action has been taken arbitrarily and on mere subjective satisfaction of the Chairman-cum-Managing Director. That apart, the learned Counsel for the petitioner is justified in contending that the Chairman-cum-Managing Director had no authority to pass the order of termination simpliciter against the petitioner and simply because in the schedule of the said Conduct, Discipline and Appeal Rules, the Chairman-cum-Managing Director has been shown as Appointing Authority for the officers like the petitioner, it cannot be held that the Chairman-cum-Managing Director was impliedly authorised to terminate the service not in connection with any disciplinary proceeding contrary to the provisions of the Articles of Association of the Company. In my view, the learned Counsel for the petitioner is also justified in his contention that if the order of termination is void abinitio, the fact of subsequent reporting to the Board of Directors in its meeting cannot validate such illegal order. It may be noted in this connection that no resolution has also been expressly taken by the Board validating the said order of termination. In the circumstances, the purported order of termination passed against the petitioner is quashed and the respondents are directed to allow the petitioner to resume his duties within a week from today and pay all his arrear salaries and emoluments and due increments within two months from today. The Rule is accordingly disposed of but there will be no order as to costs.

8. Mr. Sengupta, the learned Counsel appearing for the respondents, has prayed for stay of the operation of this judgment for a period of three weeks from today. Mr. R.K. Mukherjee, the learned Counsel appearing for the petitioner has, however, opposed the said prayer. Considering the facts and importance of the case, I allow the said prayer. Let the operation of this judgment remain stayed for a period of three weeks from today.

18.7.83 C. R. No. 8515(W) of 1980

Niren Ghosh -vs- Union of India & ors.

For petitioner: Mr. Suresh Prasad Majumdar, Mr. Alok Chakra-borty.

For respondents : (same)

9. This matter is also heard with Civil Rule No. 56(W) of 1981 and in this case also an exparte order of termination simpliciter was passed by the Chirman-cum-Managing Director of the National Textile Corporation (WBABO) Ltd. in the purported exercise of his power under the aforesaid resolution of the Board of Directors dated 26th May, 1979. The petitioner Sri Niren Ghosh was appointed as Deputy Director (Designs) by the President of India on the recommendation of the Public Service Commission in the All India Hand-loom Board and the petitioner had been serving under the Ministry of Commerce and Industries, Government of India. The petitioner was thereafter appointed as Director of Designs (Export) in the All India Handloom Board. The petitioner was given an offer to go on deputation In the National Textile Corporation and initially the petitioner went on deputation in the National Textile Corporation for a limited period, but such deputation was extended from time to time and ultimately with the consent of the petitioner, the petitioner was permanently absorbed in the National Textile Corporation in the public interest with effect from 13th June, 1975 with the sanction of the President of India. For the reasons indicated in Civil Rule No. 56(W) of 1981, it appears to me that the order of termination passed by the Chairman-cum-Managing Director against the petitioner is illegal and void and as such the same should be quashed. It may, however, be noted in this connection that in justification of the order of termination passed against the petitioner, it has been contended by the respondents that in the 34th meeting of the Board of Directors held on 7th November, 1979, two of the members of the Board expressed their views that the petitioner had not been satisfactorily discharging his duties and his conduct was also reprehensive. The Board in the said meeting felt that the performance of the petitioner was totally unsatisfactory and derogatory to the interest of the Corporation and the Chairman-cum-Managing Director was empowered to take such step as he might deem fit for dealing with the matter firmly as well as toning up the administration The respondents have contended that accordingly there was a clear objective basis for taking action against Sri Ghosh by passing the impugned order of termination simpliciter. It, however, appears from the records that the chairman-cum-Managing Director did not pass the impugned order of termination immediately on the footing that he was entrusted by the Board to take appropriate action against the petitioner on 7th November, 1979 and that such action was absolutely necessary to be taken immediately. On the contrary, it appears that on 8th November, 1979 the Chairman-cum-Managing Director asked the petitioner to explain why without permission of the competent authority, he had left office at 3-30 P. M. and the petitioner gave his explanation and refuted the said allegation of leaving the office unauthorisedly at 3-30 p.m. It was only on 16th November, 1979 the impugned order of termination was passed. It, therefore, does not appear to me that the said impugned order of termination was passed by the Chairman-cum-Managing Director against the petitioner on the basis of the recommendation of the Board of Directors on 7th November, 1979 and on the footing that it was absolutely necessary to pass such an exparte order of termination. Morever, on the basis of the

recommendation of the Board of Directors, the Managing Director did not start any disciplinary proceeding against the petitioner but passed the said order of termination exparte although he was not competent to pass such exparte order of termination.

10. Mr. Sengupta, the learned Counsel appearing for the respondents has prayed for stay of the operation of this judgment for a period of three weeks from today. Considering the facts and importance of the case, the said prayer is allowed. Let the operation of this judgment remain stayed for a period of three weeks from today. 18.7.83. C. R. No. 10396(W) of 1980

Sambhu Nath Mookerjee

Vs.

N. T. C. (WBABO) Ltd. & Ors.

For Petitioner:

Mr. Samir Kumar Mukherjee

Mr. Sambhu Nath Roy.

11. This Rule is also heard analogously along with Civil Rule No. 56(W) of 1981. In this case also, an exparte order of trmination had been passed by the Chairman-cum-Managing Director of the N. T. C. (WBABO) against the petitioner who was also holding a senior assignment in the National Textile Corporetion at the relevant time. The petitioner was factory manager of Gaya Cotton and Jute Mills at the relevant time. For the reasons indicated in C. R. No. 56(W) of 1981, it is also held that there was no justification to pass the impugned order of termination against the petitioner and the order is, therefore, invalid and quashed. It has been contended by the respondents that the said exparte order of termination has been passed against the petitioner as the petitioner was hobnobbing with a particular union at the factory at Gaya thereby creating industrial unrest. It, however, transpires that the petitioner came to Calcutta for discussing some urgent matters with the permission of the Chairman, but before any discussion could be held by the petitioner, the petitioner was directed to go back to Gaya by the Chairman-cum-Managing Director without holding any discussion with him and from the letter of the Union which is Annexure ''M'' to the writ petition, it appears that the situation was quite normal and there was no necessity of the petitioners hurrying back to Gaya without discussion with the Chairman. In my view, the respondents have failed to produce any cogent material from which it can be reasonably held that there was any serious labour unrest for which the petitioner may be held responsible and/or it was absolutely necessary to immediately remove the petitioner without even giving the petitioner any opportunity of being heard. Accordingly, even assuming that the Chairman-cum-Managing Director was authorised by the said resolution of the Board of Directors to pass an order of

termination simpliciter in an appropriate case, the facts do not warrant for exercise of such power and the order of termination passed against the petitioner must be held to have been passed in colourable exercise of power. I have already indicated that in public employment, there should be some security of the service of the employees and merely on subjective satisfaction of an authority, a permanent service cannot be terminated. The Court should scrutinise the facts and determine as to whether or not there was a genuine objective basis for passing an order of termination and it will be unfortunate if the employees of the public undertakings etc. are left on the whims of an executive head. Mr. Sengupta, the learned Counsel appearing for the respondents has prayed for stay of the operation of this judgment for a period of three weeks from today. Considering the facts and importances of this case, I allow the said prayer. Let the operation of this judgment remain stayed for a period of three weeks from today.