FULL BENCH

Before : D. S. Tewatia, S. S. Kang and M. R. Agnihotri, JJ.

J. K. DHIR,—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 6298 of 1986

June 5, 1987

Constitution of India, 1950—*Articles* 166, 309 *and* 356—*Punjab Civil Service Rules, Volume II—Rule* 2.2(b)—*Punjab Service of Engineers Class I(I.B.) Rules,* 1964—*Rules* 2, 5 *and* 17 *and Appendix 'E'—Rules of Business of the Government of Punjab,* 1983—*Rule* 6—*Rules of Business of the Government of Punjab,* 1985—*Rules* 18 *and* 28—*Punjab Civil Services (Punishment and Appeal) Rules,* 1970—*Rule* 7—*Petitioner member of P.S.E., Class I Service—Rule* 5, *thereof, envisaging Government as appointing authority and Rule* 17 *read with Appendix 'E' as the punishing authority—Rule* 2 *of the Class I, Rules defining Government as meaning the Punjab Government in the adminisrative department—Departmental enquiries initiated during President rule against the petitioner by the Government in the Vigilance Department—Said inquiry initiated in the name of the President after approval of the Adviser, incharge of the Vigilance Department—Proceedings sought to be justified by virtue of the powers conferred on Vigilance Department under the Allocation of Business Rules—Enquiry proceedings so initiated—Whether competent—Said proceedings—Whether can culminate in the punishment of the employee if found guilty—State during President Rule—Governor—Whether cometent to institute departmental proceedings and appointing an Enquiry Officer as being the appointing authority or by virtue of the powers conferred under Rule* 7 *of the Punishment and Appeal Rules—Departmental enquiry instituted for taking action under Rule* 2.2(b) *of the Civil Service Rules—Delinquent official allowed to retire during the course of enquiry—Departmental enquiry aforesaid—Whether can be validly concluded.*

Held, if the statute provides that a certain order within the Department shall be passed by a named functionary, the Governor in exercise of powers under clause (3) of Article 166 of the Constitution of India, 1950 cannot designate some other functionary to exercise that power. It would, however, be a different matter, where the statute vests the exercise of the power in the Government

and not in a given Government functionary. The Government being a juristic person, some natural person has to act for the Government. The Governor in the exercise of the power under Article 166, clause (3) of the Constitution can pinpoint the Authorities, who could exercise the power on behalf of the Government and the exercise of power by such functionaries would amount to the exercise of such functions by the Government. The Punjab Governor in exercise of the powers conferred under Article 166 of the Constitution had created a separate Department of Vigilance for maintaining discipline in the employees and to punish the employees for misconduct and dereliction of duty. The expression 'Government' given in Rule 2 of the Punjab Service of Engineers Class I (I.B.) Rules, 1964, the method of recruitment to the service provided by Rule 5 and all matters regarding discipline, penalty and appeal as mentioned in Rule 17 read with Appendix 'E' of the aforesaid rules, does not only mean the department to which the employee belongs but also refers to the department which is set up to perform a given executive function *qua* the employee. When so interpreted the Government in the Vigilance Department would be the Government in the Administrative Department for the purpose of Vigilance, that is for the investigation in regard to the misconduct of the employee and the punishment for such misconduct if found guilty thereof. Rules 4 and 6 of the Rules of Business of the Government of Punjab, 1983 are indicative of this fact. As such, keeping in view the powers of the Govtrnor under Article 166, clause (3) it would be competent for the Government in the Vigilance Department to launch the departmental proceedings and proceedings can culminate in the punishment of the employee if found guilty.

(Paras 41, 42 and 45).

Held, that the executive power of the State vests in the Governor who exercises the same on the aid and advice of the Council of Ministers. The Governor is authorised by Article 166 of the Constitution to make rules for the allocation of business amongst the various Ministers. The Minister-in-charge of the portfolio gets that power under the Rules of Business and not derive any such power from the Service Rules. A perusal of Rule 18 alongwith Rule 28 of the Rules of Business of Government of Punjab, 1985, would show that the Chief Minister is the final authority in regard to the matters dealt with under Rule 28, notwithstanding provisions of Rule 18. During President Rule the executive functions of the State Government vested in the President who was to act on the aid and advice of the Council of Ministers of the Central Government. Sub-clause (a) of clause (1) of the proclamation issued under Article 356 of the Constitution enables the Punjab Government to frame rules for convenient transaction of the Business of the Government. The Governor

framed Rules of Business of the Government of Punjab, 1983 in exercise of the said powers and Schedule I, thereof, envisages Vigilance as one of the Departments which is put under one of the Advisers as evisaged by Rule 6 and defined by clause (a) of Rule 2 of the 1983 Rules. A perusal of Rule 6 of the 1983 Rules would show that the Governor had reserved to himself the right to prosecute, dismiss or remove any gazetted officer appointed by the authority above the level of Secretary. Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, by name authorises the Governor to institute disciplinary proceedings or authorise any other authority by the said order to do so. Charge-sheet having been issued under the Order of the Governor duly authenticated it cannot be said that the order in fact was not that of the Government. In fact by virtue of rule 28(1)(ii) of the 1985 Rules of Business the Governor can call for the file of any case pertaining to any employee and pass the final order and thus, he could be treated as the ultimate punishing authority of any employee of any department, who may not necessarily be of the status of the gazetted officer and, therefore, he could order initiation of the inquiry regarding any officer/employee of the State Government. As such it has to be held that at the time when the departmental proceedings were launched the Governor was the ultimate appointing and punishing authority *qua the* petitioner. He was competent to initiate departmental proceedings and appoint an Enquiry Officer against the petitioner being the punishing authority. Moreover, he was even otherwise competent to initiate the proceedings by virtue of the express powers conferred by Rule 7 of the Punishment and Appeal Rules.

(Paras 47, 48, 49, 51, 54, 55, 64, 71 and 72).

Held, that though the delinquent official had retired yet the pending departmental enquiry can be validly concluded under Rule 2.2(b) of the Punjab Civil Servce Rules, Volume II.

(Para 98).

Girija Kumar Phukan *vs.* State of Assam and others 1985(3) S.L.R. 658

(Dissented from)

Petition under Article 226 *of the Constitution of India praying that a writ of* certiorari, mandamus *or any other suitable writ, direction or order be issued* :—

(*i*) *summoning the record of the case;*

(*ii*) *quashing the disciplinary proceedings going on against the petitioner, including the charge-sheet, the order*

appointing the Inquiry Officer, and also the order, dated 2nd April, 1986 (Annexure P.9), etc.;

(*iii*) *holding that the only authority competent to initiate departmental proceedings against the petitioner is the department of Public Works, Irrigation Branch;*

(*iv*) *cost of this petition may also be granted;*

(*v*) *this Hon'ble Court may also grant any other relief that it may deem fit in the circumstances of the case;*

(*vi*) *condition regarding service of advance notice on the respondents may kindly be dispensed with;*

(*vii*) *condition regarding filing of certified copies may also be dispensed with;*

Further praying that till the decision of the present petition, the departmental proceedings going against the petitioner may kindly be stayed. It may further be mentioned here that the departmental enquiry is now fixed for 24th November, 1986 for evidence of the Department.

(The case admitted to Full Bench by Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice M. R. Agnihotri on February 5, 1987).

J. L. Gupta, Senior Advocate (Rajiv Atma Ram, Advocate, with him), *for the Petitioner.*

H. S. Riar, Deputy Advocate-General, Punjab, *for the Respondents.*

JUDGMENT

D. S. Tewatia, J.

(1) Petitioner Shri J. K. Dhir, who at the relevant time happened to be Superintending Engineer, Sutlej Yamuna Link Canal Project (for short 'SYL Canal Project') petitioner Shri A. K. Ummat, who at the relevant time happened to be Chief Engineer (Co-ordination) of the SYL Canal Project and petitioner Shri D. P. Singla, who retired as Superintending Engineer, Public Works Department (Irrigation Branch) on 30th April, 1986, and at the relevant time was associated with 'SYL Canal Project' as Executive

Engineer and was later on (on being promoted on 9th June, 1982), as Superintending Engineer (Administration) Accounts SYL Canal Project, at Chandigarh, have through separate writ petitions (C.W.P. No. 6298 of 1986, C.W.P. No. 8558 of 1986 and C.W.P. No. 6308 of 1986, respectively) impugned the validity of the initiation of the departmental inquiry and its continuation at the instance of the Vigilance Department of the Punjab Government on the ground of its incompetence and lack of jurisdiction, for according to them only the Administrative Department of the petitioiners, i.e., the Irrigation Department, was competent to initiate and continue the said departmental inquiries and not the Vigilance Department.

2. Sarvshri A. K. Ummat and D. P. Singla, petitioners, have additionally impugned the departmental inquiry initiated against them on 23rd July, 1984, and in the month of March, 1984, respectively, on two other grounds, viz., that the said enquiries could not be continued against them for the purpose of imposing punishment, as according to them, after their retirement, only an inquiry in terms of rule 2.2(b) of the Punjab Civil Services Rules, Volume II (hereinafter referred to as 'the C.S.R. Rules') for purposes of imposing cut in their pension alone is competent and (ii) that the pending departmental inquiry, in question, could not be continued even for the purpose of imposing cut in pension in terms of rule 2.2 (b) of the C.S.R. Rules.

3. Since all the three writ petitions (Nos. 6298, 6558 and 6308 of 1986) involve common questions of law and facts, they are proposed to be decided by a single judgment, which shall be read in Civil Writ petition No. 6298 of 1986. Reference to facts where found necessary would be made from the said petition, except where facts peculiar to a given petition are required to be adverted to.

4. As the merits of the charges, which form subject-matter of the departmental inquiry. are not required to be pronounced upon for the purpose of determining the validity or invalidity of the departmental inquiry, a detailed reference to facts and the circumstances in which the departmental inquiries came to be initiated, is not necessary. It would suffice to mention that the work on the SYL Canal Project was taken in hand in the year 1982. Petitioner Shri J. K. Dhir was posted as Superintending Engineer, SYL Canal Construction Circle No. III, at Chandigarh, in June, 1981, and remained on the said post till May, 1982. During that period purchases were routed through him. During his tenure he had to purchase trucks for the said SYL Canal Project. *Vide* the letter dated

16th February, 1982 (Annexure P-1) he requested the then Chief Engineer, Shri A. K. Ummat (petitioner in C.W.P. No. 6558 of 1936) to accord sanction to the purchase of 24 trucks, who in turn obtained requisite sanction from the Government; that,—*vide* the letter dated 17th May, 1982 (Annexure P-2), the said Chief Engineer directed Shri J. K. Dhir (petitioner in C.W.P. No. 6298 of 1986) to purchase 24 trucks of 5 tonnes capacity. Since by that time, demand for trucks had gone up, Shri J. K. Dhir, petitioner, sought approval for the purchase of additional 14 trucks, which was received and thereafter Shri J. K. Dhir placed an order with Messrs Premier Automobiles, Bombay, for the purchase of 38 trucks of 5 tonnes capacity.

5. In March, 1984, a charge-sheet (Annexure P-3) was served on Shri J. K. Dhir, petitioner, by the Government of Punjab in the Vigilance Department. On receipt of the said charge-sheet, Shri J. K. Dhir objected to the initiation of the proceedings against him by the Vigilance Department. It was asserted that the Punjab Government in Vigilance Department had no jurisdiction to do so. The Government in the Vigilance Department ignoring the said objection of Shri J. K. Dhir, appointed Shri B. B. Mahajan, I.A.S., as an Inquiry Officer,—*vide* the order dated 15th June, 1984, to go into the charges against Shri J. K. Dhir and also against other officers; that thereafter the Inquiry Officer was changed,—*vide* order dated 27th September, 1985. The Inquiry Officer was again, for the third time, changed,—*vide* order dated 14th July, 1986 (Annexure P-6). It is averred that the appointment of Inquiry Officers by the Vigilance Department was similarly without jurisdiction; that the petitioner Shri J. K. Dhir submitted before the Inquiry Officers a written request that the action of the Vigilance Department for initiating the departmental proceedings against him and its action of issuing charge-sheet and the appointment of the Inquiry Officer *et cetera* were wholly illegal. The said representation of the petitioner Shri J. K. Dhir were rejected by respondent No. 3, i.e., Shri S. L. Kapur, Financial Commissioner (Taxation), Punjab, Chandigarh (Inquiry Officer),—*vide* his order dated 2nd April, 1986 (Annexure P-9).

6. Shri A. K. Ummat (petitioner in C.W.P. No. 6558 of 1986) in addition to his original assignment as Managing Director, Punjab State Tube-well Corporation-cum-Chief Engineer, Minor Irrigation, was designated to co-ordinate the construction work of SYL Canal

Project. In other words, he was the senior most Chief Engineer on the SYL Canal Project and had to co-ordinate the function and work *inter alia* of Mr. J. K. Dhir and other officials. Shri A. K. Ummat was charge-sheeted by the Vigilance Department, the charge against him *inter alia* being that he had been negligent in the discharge of his duties and had colluded with Shri J. K. Dhir (petitioner in C.W.P. No. 6298/1986) in the fraudulent purchase of trucks; that the departmental inquiry against Shri A. K. Ummat was to be initiated along with the departmental inquiry already initiated against Shri J. K. Dhir.

7. The Vigilance Department also served charge-sheet (Annexure P-1) on Shri D. P. Singla (petitioner in C.W.P. No. 6308 of 1986), in the month of March, 1984, and appointed respondent No. 2 (Financial Commissioner, Taxation, Punjab) as Inquiry Officer to inquire into the charges,—*vide* order dated 14th July, 1986 (Annexure P-3); that the said order revealed that respondent No. 2 had been required to hold departmental inquiry in accordance with the procedure laid down in rule 8, read with rule 12 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as 'the Punishment and Appeal Rules') along with Shri J. K. Dhir, Superintending Engineer, Shri M. G. Mehna, Superintending Divisional Engineer and Shri A. K. Ummat, Chief Engineer. Shri D. P. Singla, petitioner, submitted two representations dated, 2nd September, 1986 (Annexure P-4 and P-5) in which he had taken the following two specific objections:—

(a) That since the petitioner has already retired no departmental inquiry could be held against him as Punishment and Appeal Rules were applicable to government employees in service and that these were no longer applicable to the petitioner a retiree as per Rules by themselves and also as per judicial pronouncement of the Punjab and Haryana High Court, reported as 1982 (1) S.L.R. 889 (Punjab and Haryana); and

(b) That as per Service Rules of the petitioner, namely "The Punjab Service of Engineers Class I P.W.D. (Irrigation Branch) Rules, 1964, only the Government in his Administrative Department was his Punishing Authority and as

such the Vigilance Department was not competent to issue him a charge-sheet and appoint inquiry officer for disciplinary proceedings.

8. The said representations were rejected by the Financial Commissioner, Taxation, Punjab (Inquiry Officer), respondent No. 2, who fixed the case for the prosecution evidence for 24th November, 1986.

9. In the written statement filed on behalf of the respondents, it has been asserted that the Punjab Government in the Vigilance Department was competent to initiate departmental inquiry proceedings against the employees working under the Government of Punjab by virtue of the provisions made in the Punjab Government Allocation of Business Rules, 1978, framed by the Governor of Punjab, who is punishing authority of the petitioners under the rules, *ibid;* that the departmental proceedings initiated against the petitioners were perfectly valid as the Vigilance Department is vested with concurrent powers to initiate departmental proceedings against all the government employees. It has also been asserted on behalf of respondent No. 2 that the charge-sheet to the petitioners was issued after obtaining approval of the then Advisor to the Governor, Incharge of the Vigilance Department, who was competent to do so under the Rules of Allocation of Business 1978, framed by the Governor of Punjab and the standing orders issued thereunder and the copies of the Rules of Business, 1983, and the standing order issued thereunder have been annexed as R-2 and R-3 to the written statement; that the Adviser holding charge of the Vigilance Department was empowered to order departmental proceedings and charge-sheet officers of All-India Services — Heads of Department and other Senior Officers under the Punjab Government; that the authority vested in the Adviser to charge-sheet the petitioner and others is also in accordance with rule 7 of the Punishment and Appeal Rules, which envisages that the Governor or any other authority empowered by him by general or special order may institute disciplinary proceedings against any government employee; that the Vigilance Department did not act as delegate of the Public Works Department (Irrigation Branch); that the powers of the Vigilance Department emanated from the Rules of Allocation of Business, 1978, which had been framed by the Governor of Punjab under clause 3 of Article 166 of the Constitution of India; that the order (Annexure P-5) appointing the Inquiry Officer was valid; that the said order had been

passed after obtaining approval of the Governor of Punjab on the file.

10. It is also asserted that by framing the given rules of business the Governor of Punjab be taken to have empowered the Adviser holding charge of the Vigilance Department in accordance with rule 7 of the Punishment and Appeal Rules to institute departmental proceedings and charge-sheet any officer under the Punjab Government. The charge-sheet (Annexure P-3) thus be taken to have been issued with the approval of the authority which was competent to do so under the Rules of Business, 1983 and the standing order issued thereunder.

11. Mr. Jawahar Lal Gupta, Senior Advocate, addressed the Court on behalf of Shri J. K. Dhir (petitioner in C.W.P. No. 6298/1986) and Sarvshri K. K. Jagia and P. N. Pathak, Advocates, argued the case on behalf of Shri A. K. Ummat and Shri D. P. Singla (petitioners in C.W.P. No. 6558 and C.W.P. No. 6308 of 1986, respectively).

12. Mr. Jawahar Lal Gupta has canvassed before us that the petitioners are Members of Punjab Service of Engineers (Class I) Public Works Department (Irrigation Branch) whose conditions of service are governed by Punjab Service of Engineers, Class I, P.W.D. (Irrigation Branch) Rules, 1964 (hereinafter referred to as 'the Service Rules'). He has referred us to rule 5 of the Service Rules, which envisages 'Government' as the appointing authority. Rule 17 of the Service Rules, which deals with disciplinary action, penalty and appeal and identifies the 'Government' with reference to Appendix 'E' to these rules as the authority empowered to impose penalty. Clause 11 of Rule 2 of the Services Rules defines the expression 'Government', as meaning the Punjab Government in the Administrative Department. He has also referred us to rule 6 of the Punishment and Appeal Rules, which identifies the 'Punishing authorities' of delinquent employee, who is being departmentally inquired against in terms of the said Punishment and Appeal Rules, as the authority which is specified in the Service Rules, regulating the appointment and conditions of the service of the employee concerned.

13. Mr. Gupta has contended on the basis of the aforesaid rules that the Government in the Administrative Department was the

appointing authority, as also the punishing authority of the petitioners and that authority alone was competent to initiate the departmental proceedings and appoint the Inquiry Officer. The Government in the Vigilance Department had no authority whatsoever to launch the departmental proceedings against the petitioners and appoint Inquiry Officers and therefore, the departmental proceedings against the petitioners are void *ab initio* and continued to be so.

14. Mr. Gupta has also urged that the Service Rules promulgated by the Governor under Article 309 of the Constitution of India cannot be overriden by the Allocation of Business Rules, framed by the Governor undtr clause (3) of Article 166 of the Constitution of India.

15. Before proceeding to examine the submissions advanced on behalf of the petitioners, it would be desirable to take notice of the relevant portion of clause (11) of rule 2, rule 5, rule 17, Appendix 'B' of the Service Rules which are in the following terms:—

"*R*. 2. *Definition*: In these rules unless there is anything repugnant in the subject or context;

* * * *

(11) "Government" means the Punjab Government in the Administrative Department:

Provided that if relaxation of any rule involves financial implications, prior concurrence of the Finance Department will be obtained;"

"*R*. 5. *Recruitment of Services*.—(1) Recruitment to the service shall be made by Government by any one or more of the following methods:—

(a) by direct appointment;

(b) by transfer of an officer already in class I service of the Government of India or of a State Government;

(c) by promotion from Class II Service.

* * * * *

* * * * *"

"*R*. 17. *Discipline, penalty and appeal*.—(1) In maters relating to discipline, penalties and appeals, members of the service shall

without prejudice to the provisions of the Public Servants (Inquiries) Act, be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1952, as amended from time to time, provided that the nature of penalties which may be inflicted, the authority empowered to impose such penalties and the appellate authority shall, subject to the provisions of any law or the rules made under Article 309 of the Constitution of India be as specified in Appendix E.

(2) * * * *

* * * * *"

APPENDIX 'E'

(*See rule* 17)

Nature of penalty	Authority empowered to impose penalty	Appellate Authority
(i) Censure ...	Government	Nil
(ii) Withholding of increments or promotion, including stoppage at an efficiency bar		
(iii) Reduction to a lower post or time-scale or to lower-stage in a time-scale ...		
(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders		
(v) Suspension ...		
(vi) Removal from the Civil Service, which does not disqualify from future employment. ...		
(vii) Dismissal from the Civil Service which ordinarily disqualifies from future employment.		

Relevant portions of rule 6, rule 7, rule 8 and rule 9 of the Punishment and Appeal Rules, 1970 are in the following terms:—

"R. 6. *Punishing authorities.*—Subject to the provisions of Clause (1) of Article 311 of the Constitution of India, the punishment authority shall be such as may be specified in the rules regulating the appointment and conditions of service of the employee concerned."

"R. 7. *Authority to institute proceedings.* (1) The Governor or any other authority empowered by him by general or special order may:—

(a) institute disciplinary proceedings against any Government employee;

(b) direct a punishing authority to institute disciplinary proceedings against any Government employee on whom that punishing authority is competent to impose under these rules any of the penalties specified in rule 5."

(2) * * * * *
* * * * *".

"R. 8. *Procedure for imposing major penalties.*—(1) No order imposing any of the penalties specified in clause (v) to (ix) of rule 5 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and rule 9 or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the punishing authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government employee, it may itself inquire into or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

* * * * *".

16. Memorandum, dated 22nd March, 1984 (Annexure P-3), which was sent to Shri J. K. Dhir, petitioner, along with statement

of allegations, statement of witnesses and the statement of the documents, and which was signed by the Deputy Secretary to Government, Punjab, Vigilance Department is in the following terms:—

"No. 13/57//82-Vig.(II)-84/1305, dated 22nd March, 1984.

MEMORANDUM

Under the orders of the President of India, Shri J. K. Dhir, Superintending Engineer, Irrigation Department, Punjab, is informed through this letter that it is proposed to take action against him under the Punjab C.S.R. (P&A) Rule, 1970, on the basis of allegations detailed in the statement of allegations attached. The allegations are on the basis of the statement of allegations attached. A statement one each of witnesses and documents is also attached herewith.

2. Shri J. K. Dhir, S. E. is hereby informed under the orders of the President of India that he may intimate in writing within 20 days of the receipt of this letter (this period will not be extended) if he accepts all or some of these allegations and he should submit his reply or clarify his position and does he wish to be heard in person.

3. Shri J. K. Dhir, S. E. is also informed that if for the purpose of preparing his reply he wishes to have an access to the relevant record he may inspect the same in the office of the Director/Vigilance Bureau, Punjab S.C.O. No. 60-61, Sector 17-D, Chandigarh, on any working day after making prior appointment with him. It is, however, pointed out that only such documents shall be shown to you as are in the possession of the Vigilance Department and are connected with this case. If in the opinion of the Government it is not desirable in the public interest to allow you access to certain documents, such access shall be refused. If you want to consult any other record which is not in the custody of the Vigilance Department, it is for you to undertake its inspection by making your own arrangement. However, it is made clear to Shri J. K. Dhir that it is his duty to inspect record in the office of the Director, Vigilance Bureau and your failure to do so shall not constitute a

valid ground for delay in submission of your written statement and if the written statements not received by the undersigned within the stipulated period it shall be presumed that you have none to submit. In case certain record is not available which is entered in the list of documents he may intimate a list of such record to the Director Vigilance Bureau and the Government giving full details so that further action can be taken.

4. Written reply (in duplicate) may be sent to the undersigned.

5. Receipt of this memo along with its enclosures may please be acknowledged.

(Sd.) . . . . . .,
Deputy Secretary to Government, Punjab,
Vigilance Department.

17. A perusal of the abovementioned Memorandum would show that petitioner Shri J. K. Dhir had been charged-sheeted under the name and orders of the President of India. Other petitioners too had been similarly charge-sheeted under the orders of the President of India, which were authenticated by the Deputy Secretary to the Government, Punjab, Vigilance Department.

18. Rule 2 of the Government of Punjab Allocation of Business Rules, 1978, provides that the business of the Government of the State of Punjab shall be transacted in the Departments specified in the Schedule annexed to these rules and shall be classified and distributed among those departments as laid down therein. Rule 4 thereof *inter alia* provided that the Secretary to Government shall be official Head of the Department. The Schedule which envisages Department of Vigilance deals with the following:—

"1. General Vigilance and Procedure.

2. All policy matters relating to corruption among public servants.

3. Co-ordination of work relating to Vigilance in various Departments.

4. All matters relating to cases of bribery, corruption, per sonal immorality, misuse of public fund, loss caused to Government Departmental or procedural irregularities and the like, on the part of Government employees dealt with or otherwise taken cognizance of by this Department. This includes cases of appeal against acquittal in cases relating to the Vigilance Bureau.

5. Establishment matters relating to the staff of the Vigilance Bureau."

19. *Vide* Notification No. 1/22/83-GC (2)/29514, dated 11th October, 1983, the Governor of Punjab promulgated the Rules of Business of the Government of Punjab, 1983, in supersession of the earlier Notification No. 1/10/80-GC(2)/6574, dated the 7th June, 1980, in the wake of the Proclamation issued by the President of India on the 6th of October, 1983, under Article 356 of the Constitution of India and the orders made on the same date under sub-clause (i) of clause (c) of the said Proclamation.

20. Rule 4 of the Rules of Business of the Government of Punjab, 1983, provided that business of the Government shall be transacted in the departments referred to in the Government of Punjab, Allocation of Business Rules, 1978, as in force immediately before the issue of the Proclamation and shall be classified and distributed amongst these departments, as laid down therein.

21. Rule 6 of the Rules of Business, 1983, provides that except as otherwise provided in these rules, each Adviser shall be responsible for the disposal of the business, pertaining to the department allocated to him under sub-rule (2) and cases shall, subject to such orders, if any, as may be passed from time to time by the Governor in regard to any particular case or class of cases, ordinarily be disposed of by or under the authority of the Adviser, who may by means of standing orders, give such directions as he thinks fit for the disposal of cases in the departments allocated to him.

Sub-rule (2) of rule 6 of the said Rules provided that the departments specified in Schedules I, II, III and IV shall stand allotted amongst the Advisers, as may be specified by the Governor, from time to time, except that the Departments under the administrative control of the Chief Secretary shall not be allotted to any Adviser, and the Chief Secretary shall submit directly to the Governor such cases or class of cases as the Governor may require to be submitted to him by means of a standing order.

22. Schedule I attached to Rules of Business, 1983, shows that the Department of Vigilance was allocated to Shri G. Jagatpathi, Adviser (J).

23. Annexure R-3 to the written statement of respondent No. 2 is a standing order issued in terms of rule 6 of Rules of Business, 1983 and provides that cases of Vigilance Department shall be disposed of by authorities as indicated in the statement attached therewith. The attached statement mentions the details of the cases to be disposed of at the level of the Governor/Adviser/Secretary/Deputy Secretary/Budget and Establishment Officer, Vigilance Department. The Governor is envisaged to deal with the following matters:—

"1. All policy matters;

2. Prosecution, dismissal, removal, compulsory retirement or the imposition of major penalty on any gazetted officer, heads of semi-government institutions (Chairman, Managing Director and Executive Director, etc.), and Government employees appointed by any authority above the level of Secretary.

24. In sum and substance, the proposition canvassed on behalf of the petitioners by Mr. Jawahar Lal Gupta is that the Governor on the aid and advice of the Council of Ministers is to transact the executive business of the Government in accordance with the laws enacted by the Legislature and the statutory rules enacted by the Legislature or framed under their authority; that the Governor on the aid and advice of the Council of Ministers, while promulgating rules of business in terms of clause 3 of Article 166 of the Constitution of India cannot provide for the transaction of the Government business in a manner other than the one envisaged in law enacted by the Legislature or the statutory rules. In other words, the rules of business must yield to the laws enacted by the Legislature and the statutory rules and in this particular case to the Service Rules that have been promulgated by the Governor under Article 309 of the Constitution of India, as these rules have the force of law.

25. Mr. Jawahar Lal Gupta, counsel for the petitioner, asserts that this should in any case be so, because not only the rules of business framed under Article 166(3) of the Constitution are directory

in nature, but even Article 166 of the Constitution is itself directory in nature. He sought to underpin his aforesaid submissions by a Full Bench decision of Bombay High Court in *Chandrakant Sekharram Karkhanis and others* v. *State of Maharashtra and others* (1), a Division Bench decision of Madhya Pradesh High Court in *Raipur Transport Co. Pvt. Ltd., Raipur and another* v. *The State of Madhya Pradesh and others* (2), and a Supreme Court decision rendered in (*State of Haryana* v. *Shri P. C. Wadhwa*, I.P.S.) (3).

26. The decision in Chandrakant's case (supra) does not even remotely support the contention advanced on behalf of the petitioners. In that case, the Court had to resolve a seniority dispute between promotees and direct recruits to the posts of Junior Assistants. A circular which bore the signatures of the Assistant Secretary to Government of Maharashtra General Administratior Department under endorsement by order and in the name of Governor of Maharashtra came up for interpretation. The petitioners, who were promotees, felt aggrieved by the circular, dated 27th March, 1969, and the seniority list, dated 30th March, 1970, that was drawn up in accordance with the principles enunciated in the said circular. This circular and other such circulars were challenged on the principal ground that the said circulars/resolution or orders were in the nature of executive or administrative instructions and, as such could not override the statutory 1957 Rules, which had been framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution and that such circulars did not have any force of law and at any rate being inconsistent with the statutory rules framed in exercise of the powers conferred under Proviso to Article 309 of the Constitution could not affect their rights. The circulars, in question, were claimed to be executive instructions for the reasons that they bore the kind of endorsement, already adverted to. On behalf of the respondents, such circulars were claimed to be rules promulgated by the Governor in terms of the proviso to Article 309 of the Constitution. The petitioners had sought to refute that claim by adverting to the fact that in the manner these were authenticated, only the executive instructions are issued and not the rules.

(1) 1977(2) S.L.R. 142.

(2) A.I.R. 1969 M.P. 150.

(3) C.A. 4395/86, decided on 16th April, 1987.

27. It was also canvassed that the said circular/resolutions did not refer to the source of power, under which these were being issued by the Governor. The contention led to the formulation of following three questions by the referring Bench for the decision of the Larger Bench:—

(1) Whether the Circulars, Orders or Resolutions or parts thereof laying down rules or principles of general application, which have to be observed in the recruitment or fixation of seniority of Government servants generally or a particular class of them, and which have been duly authenticated, by a signature under the endorsement "by order in the name of the Governor of Maharashtra" and intended to be applicable straightaway are or amount to the rules framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution of Indai although the said Circulars, Orders or Resolutions do not expressly state that the same are made or issued in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India and are not published in the Government Gazette ?

(2) Whether the said Circulars, Orders or Resolutions or parts of them as set out in Question No. 1 above must be deemed to be rules made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India ?

(3) Whether the said Circulars, Orders or Resolutions or parts, thereof, as set out in Question No. 1 above have the same force or effect in law as a rule or rules made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India ?

28. Tulzapurkar, J. (as he then was) after referring to the various provisions of the Constitution and rule 9 of the Maharashtra Government Rules of Business observed as follows :—

"Having regard to the aforesaid material provisions of the Constitution, namely, provisions contained in Article 309 together with the Proviso thereunder as well as the provisions contained in Article 166 and the relevant provisions contained in the Maharashtra Government Rules of Business, it will appear clear that the rule-making power

conferred upon the Governor under the proviso to Article 309, which is legislative in character and the power to issue Circulars, Resolutions or Orders containing executive instructions in exercise of the executive power conferred upon the State under Article 166 do overlap so far as the subject-matter of Rules of recruitment and conditions of public services of State Government employees are concerned, but at the same time it cannot be disputed that all executive instructions or directions issued by the State Government in exercise of its executive power conferred under Article 166 touching this subject-matter or topic must yield to rules that may be framed by the Governor under the proviso to Article 309 of the Constitution in their turn, the rules framed by the Governor under the proviso to Article 309 would be subject to any enactment made by appropriate legislature under substantive provision contained in Article 309 of the Constitution itself. *In other words, to the extent to which and in so far as executive instructions or directions issued by the State Government in exercise of its power under Article 166 would be inconsistent with Rules that may be framed by the Governor under the proviso to Article 309 of the Constitution, such instructions will have to be disregarded*......

* * * * *

* * * * *"

29. It is the above underlined observation that Mr. Jawahar Lal Gupta, the learned counsel for the petitioner, had pressed into service for the sustenance of his submission.

30. A perusal of the aforesaid observations, with respect, does not even remotely suggest that the allocation and organization of the Business of the Government, in exercise of the power under Article 166, clause (3) of the Constitution would yield to the rules, framed by the Governor under Article 309 or the provisions of the legislation, enacted by the legislature in terms of Article 309 of the Constitution. The directory nature of Article 166 or the rules of Business of Government, framed under clause (3) of Article 166 is thus not relevant to the discussion at all in the present case.

31. In *Raipur Transport Company's case* (supra), the contention advanced before the Division Bench of the Madhya Pradesh

High Court was that the Special Secretary, who had heard the objections to the Scheme envisaged by section 68-D of the Motor Vehicles Act, 1939, was not competent to do so. It was said that the Governor alone was competent to do so. On behalf of the respondent-State, reliance was placed on the rules of Business made under Article 166, clause (3) of the Constitution and it was argued that the exercise of the power of the State Government by the Special Secretary by virtue of the rules of Business amounted to the action of the Government. It was at that stage that the counsel for the petitioner drew attention to paragraph 3 of the supplementary instructions, issued under rule 13 of the Business Allocation Rules, which required the Secretary to submit a weekly list of cases which he had disposed of, to the Minister concerned and the Minister had been given the power to send for any case in the list and pass such orders thereon as he might think fit in accordance with the Business of Allocation Rules and it was argued that the instructions contained in paragraph 3 created a situation in which the Special Secretary could consider the objections to a Scheme and the Minister could pass an order, approve or modify the Scheme even contrary to the orders of the Special Secretary and thus there would be a divided responsibility destructive of the concept of the judicial hearing under section 68-D of the Act as explained by the Supreme Court in the case of *G. Nageswara Rao*, (4).

32. The Court while rejecting the said contention observed that in view of the provisions of section 68-D(3) of the Act, namely, that the Scheme as approved or modified under sub-section (2) of Section 68-D shall be published in the Gazette and shall thereupon become final, the Minister could not claim any power under paragraph 3 of the Supplementary Instructions to pass and order under Section 68D(2) in a case in which the Special Secretary, in exercise of the powers conferred on him, had considered the objections to the Scheme and approved or modified it. The Court highlighted the provisions of sub-section (3) of Section 68-D of the Act, which read : "The Scheme as approved or modified under sub-section (2)" and observed that that meant the 'Scheme' as approved or modified under sub-section (2) by the Special Secretary, in exercise of the powers conferred on him. It was that Scheme which alone could be published under sub-section (3) of section 68-D and that

(4) A.I.R. 1959 S.C. 318=1959 Suppl. (1) S.C.R, 319,

becomes final. Paragraph 3 of the Supplementary Instructions could not be construed so as to give power to the Minister to pass an order in relation to a Scheme which had been approved or modified by the Special Secretary in exercise of the powers conferred on him under section 68-D of the Act. The Bench further observed that if that were done, it would amount to overriding the statutory provision contained in sub-section (3) of section 68-D in regard to the publication of a Scheme as approved or modified by the duly authorised officer after considering the objections to the Scheme. Relying upon an earlier Division Bench decision of Nagpur High Court in *Rukhmanibai* v. *Mahendralal*, (5) the Bench observed :

> "It is well-settled that in making the Rules of Business the Governor cannot override the statutory provisions relating to a particular function or business."

From *Shri P. C. Wadhwa's case* (supra), Mr. J. L. Gupta, the learned counsel for the petitioner, placed reliance on the following observation of their lordships occurring in paragraph 10 thereof:—

> "..................................The Rules of Business that have been framed under Article 166 cannot override the provisions of the Act or any statutory rules. Indeed, the Business Rules also do not attempt to override Rule 1.2 of the Punjab Police Rules, for it cannot. There is much substance in the contention made by the respondent appearing in person and Mr. Garg learned Counsel appearing on behalf of the intervenor, the IPS Officers' Association, that the business rules framed under Article 166 cannot be relied upon for the purpose of interpreting the provision of clause (e) of Rule 2 of the Rules."

These observations were made by their lordships in the context of a contention advanced on behalf of the State of Haryana that the Home Secretary was the Head of the Police Department, which contention was sought to be supported from a reference to rule 4 of the Rules of Business, which mentions that the Secretary of each Department of the Secretariat would be the Head of that Department. Their lordships highlighted baselessness of the contention

(5) I.L.R. (1949) Nag. 182 (A.I.R. 1949 Nag. 174).

by the following observation:—

> "Thus, the Secretary of the Home Department is the head of the Home Department being a Department of the Secretariat, but merely because he has to conduct the business, on behalf of the Government, of the Police Department, he does not thereby become the head of the Police Department. Item No. 37 under the General Administration Department in the Schedule relates to Judges of the High Court and officers of the Superior Judicial Service. The Chief Secretary of the Government of Haryana is the head of the General Administration Department by virtue of Rule 4 of the Business Rules. But that does not mean that the Chief Secretary is also the head of the Administration relating to the Judges of the High Court and officers of the Superior Judicial Service. Similarly, Item No. 21 of the General Administration Department relates to Council of Ministers and its Committees. Surely, the Chief Secretary has no authority whatsoever on the Council of Ministers and its committees. There is, therefore, no substance in the contention made on behalf of the appellant that as Police, Railway Police and P.A.P. have been placed under the Home Department, the Secretary of the Home Department is the head of the Police Department by virtue of Rule 4 of the Business Rules."

34. Article 163 envisages a Council of Ministers to aid and advise the Governor in the exercise of his functions other than those that he exercises in his direction.

35. Clause (3) of Article 166 enables the Governor to make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

36. The provisions of clause (3) of Article 166 read with Articles 154 and 163 empower the Governor on the advice of the Council of Ministers *inter alia*—

(i) to organize the Business of the Government in the form of Departments;

(ii) allocate such Departments to one or the other Ministers; and

(iii) provide for the transaction of business of that department by the authorities concerned with the given Department.

37. There can be no dispute with the proposition that the Governor, as aided and advised by Council of his Ministers, has to transact the Business of the Government in accordance with the laws validly enacted by the Legislature.

38. In a democratic set up one cannot conceive of the situation to be otherwise. more so, in the light of the Constitution that we have given to ourselves, which envisages rule of law, as against the rule of men. However, organization of Business of the Government into various Departments and the transaction of the Business in these Departments by the concerned authorities are two different matters.

39. What function is to be allotted to which Department is for the Governor to decide only on the aid and advice of the Council of Ministers, because that is to be done in the light of experience gained as a result of the transaction of the Business of the Government. Legislature is not the best Judge of it and the Legislature cannot by law provide for it. It is for the Governor as aided and advised by the Council of the Ministers to decide as to whether a given business or function is to be the part of 'A' Department or 'B' Department or it is to constitute a separate Department for performing a given nature of governmental function. If the Legislature is to provide by law that a given function is to be part of the given Department, then that would amount to impinging upon the constitutional power of the Governor exercisable by him under Article 166, clause (3) of the Constitution. To the extent, the given provisions of the legislation impinges upon the said power of the Governor exercisable under Article 166, clause (3), then, such legislative provision shall be *ultra vires* the provisions of clause (3) of Article 166 of the Constitution. The power given to the Legislature by Article 245 of the Constitution expressly subjects it to the provisions of the Constitution.

40. The position is, however, different in regard to the transaction of the Business of the Government in the given Department by the given authorities thereof.

41. If the statute provides that a certain order within the Department shall be passed by a named functionary, the Governor in exercise of powers under clause (3) of Article 166 of the Constitution cannot designate some other functionary to exercise that power. It would, however, be a different matter, where the statute vests the exercise of the power in the Government and not in a given Government functionary. The Government being a juristic person so some natural person has to act for the Government. The Governor in the exercise of the power under Article 166, clause (3) of the Constitution can pin-point the Authorities, who could exercise the power on behalf of the Government and the exercise of power by such functionaries would amount to the exercise of such function by the Government and such exercise of power in fact by the Special Secretary in *Raipur Transport Company's case* (supra) has been so up-held.

42. The given department involves performance of various executive functions of the Government qua the employees and qua the public. One of the functions is to maintain discipline in the employees and punish the employee for misconduct and dereliction of duties. It is for the Government with the aid and advice of the Council of Ministers to either provide that each department would perform this function qua the employees of its department or to provide for a separate department to perform the given function qua the employees of all the Government Departments. The Punjab Governor, in exercise of powers conferred under Article 166, clause (3) of the Constitution had created a separate Department of Vigilance for the performance of the said function. One reason that one can conceive of may be that it must have weighed with the Governor that it would be desirable to have a Specialist Department for the purpose of investigation and prosecution of misconduct on the part of the employees which may also be conducive for maintaining uniformity of the standards and the objectivity in the conduct of the investigations and inquiries against the employees.

43. Rule 2 of the Service Rules should not be understood as providing rigid and cast-iron definition of the terms defined by it. That is why, it has prefaced the substantive provision of rule 2, with the expression:

> "In these rules, unless there is anything repugnant in the subject or context,—"

44. The expression "Government" in the Administrative Department does not only mean the department to which the employee belongs to, but also refers to the department, which is set up to perform a given executive function qua the employee. When so interpreted the Government in the Vigilance Department would be the Government in the Administrative Department for the purpose of Vigilance, that is for the investigation in regard to the mis-conduct of the kind of the employee and the punishment for such misconduct, if found guilty thereof.

45. We have thus no hesitation in holding, in view of what we have said above in regard to the power of the Governor under Article 166, Column (3), that the Government in the Vigilance Department would be competent to launch the departmental proceedings and punish the employee if found guilty as a result of the said proceedings.

46. Even otherwise there is no merit in the contention advanced by Mr. Jawahar Lal Gupta, the learned counsel for the petitioner. Assuming for the sake of argument that it was the Government in the Administrative Department, which is the appointing and punishing authority, but then the Government, as already observed, is a juristic person. It has to act through natural person. Which that natural person is or can be, has not been identified in the Service Rules.

47. The executive power of the State, as already observed, vests in the Governor who exercises the same on the aid and advice of the Council of Ministers. The Governor may pass the order directly in accordance with the advice tendered by the Council of Ministers, or he may have some-one-else to pass the order in accordance with such advice.

48. The Governor is authorized by Article 166 of the Constitution to make rules for the more convenient transaction of the Business of the Government of the State and for the allocation among Ministers of the said Business.

Reference to rules of Business, hereafter, is made from the Rules of Business of Government of Punjab, 1985, which are in substance similar to the corresponding Rules of Business of Government of Punjab, 1983. Rule 18 of the Rules of Business of the Government of Punjab, 1985, no doubt mentions that except as otherwise provided by any other rule, cases shall ordinarily be disposed

of by or under the authority of the Minister-in-charge, who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Chief Minister and the Governor.

49. The Minister-in-charge of the portfolio gets that power under the Rules of Business and does not derive any such power from the Service Rules. This power is made subject to other Rules of Business. Rule 4 of the said Rules of Business of the Punjab Government provides that the Council shall be collectively responsible for all executive orders, issued in the name of the Governor in accordance with these rules, whether such orders are authorised by an individual Minister on a matter, pertaining to his portfolio or as a result of discussion at a meeting of the Council, or howsoever otherwise. There is also a rule, i.e., rule 28(1) of the Punjab Rules of Business, 1985, which is in the following terms:—

"R. 28 (*i*) The following classes of cases shall be submitted to the Chief Minister before the issue of orders:

* * * * *

(ii) Cases raising questions of policy and cases of administrative importance not already covered by the Schedule;

* * * * *

(vii) Proposals for the prosecution, dismissal, removal or compulsory retirement of any gazetted officer.

* * * * *

(xxiii) Such other cases or classes of cases as the Chief Minister may consider necessary."

50. In this regard, sub-rule (vii) of rule 28, *ibid*, mentions proposals for the prosecution, dismissal removal or compulsory retirement of any gazetted officer.

51. A perusal of rule 28 (1) along with rule 18 of the Rules of Business would show that the Chief Minister is the final authority

in regard to the matters dealt with under rule 28, notwithstanding the provisions of rule 18. That means the Chief Minister is the ultimate natural person, who is authorised to take executive action on behalf of the Government pertaining to any department of the Government, notwithstanding the fact as to who is the Minister-in-charge of the given department, in respect of appointment of gazetted officers and their prosecution/dismissal/removal *et cetera*. It would hardly be relevant as to who had processed the case and submitted the proposal to the Chief Minister.

52. An identical question arose before their lordships of the Supreme Court in *Bachittar Singh* v. *State of Punjab and another* (6). That was a case in which the Chief Minister had passed the order on the appeal from an order taking departmental action of an official employed in a Department, which was under the Revenue Minister and not under the Chief Minister. It was argued on behalf of the employee that since his appeal was not decided by his Minister, but was decided by the Chief Minister, Mr. Partap Singh Kairon, who had no jurisdiction to deal with the appeal, so it must be deemed to be still pending. In that case, their lordships after adverting to rule 28(1)(ii) of these rules of business which were identical to the present rules, repelled the contention with the following observation:

> "We, however, think that clause (ii) would certainly entitle the Chief Minister to pass an order of the kind which he has made here. The question to be considered was whether though grave charges had been proved against an official he should be removed from service forthwith or merely reduced in rank. That unquestionably raises a question of policy which would affect many cases and all the departments of the State. The Chief Minister would, therefore, have been within his rights to call up the file of his own accord and pass orders thereon. Of course, the rule does not say that the Chief Minister would be entitled to pass orders but when it says that he is entitled to call for the file before the issue of orders it clearly implies that he has a right to interfere and make such orders as he thinks appropriate.
>
> * * * *".

(6) A.I.R. 1963 S.C. 395.

and after referring to a rule identical to rule 4 of the 1985 Rules of the Business of the Punjab Government Rules, their lordships concluded:

> "Thus the order passed by the Chief Minister, even though it is on a matter pertaining to the portfolio of the Revenue Minister, will be deemed to be an order of the Council of Ministers. So deemed its contents would be the Chief Minister's advice to the Governor, for which the Council of Ministers would be collectively responsible. The action taken thereon in pursuance of R. 8 of the Rules of Business made by the Governor under Article 166(3) of the Constitution would then be the action of the Government. Here one of the Under Secretaries to the Government of Punjab informed the appellant by his letter dated May 1, 1957 that his representation had been considered and rejected, evidently by the State Government. This would show that appropriate action had been taken under the relevant rule."

53. If in a given case it is shown that on the file, the order for prosecution had been passed by the Chief Minister and the chargesheet which is served upon the official, is in the name of the Governor, and is authenticated by an official of the rank specified in the Business Rules, belonging to the Vigilance Department and not the Irrigation Department, the action in our opinion, even *strictu sensu* would be that of the Government as defined in the Service Rules.

54. What is more, so far as the present case is concerned, it so happened that at the time when the petitioners were first chargesheeted and the inquiry officers appointed to conduct the departmental inquiries against them, the State was under President's rule. The President in terms of sub-clause (a) of clause (1) of Article 356 of the Constitution assumed to himself the functions of the Government of the State and the powers vested in or exercisable by the Governor, or anybody or authority in the State, other than the Legislature of the State. The President, in exercise of his powers under sub-clause (a) of clause (1) of Article 356 of the Constitution, issued an order, which provided that such functions of the Government of the State and such powers that vested in or were exercisable by the Governor, or anybody or authority in the State

other than Legislature of the State that had been assumed by the President, shall also be exercisable by the Governor.

55. During the President's rule, Article 163 of the Constitution became inapplicable. The executive functions of the State Government vested in the President, who was to act on the aid and advice of the Council of Ministers of the Central Government. Sub-clause (1) of clause (c) of the Proclamation, dated 6th October, 1983, issued under Article 356 of the Constitution by the President on the aid and advice of the Council of Ministers of the Union Government, enabled the Governor to frame rules for more convenient transaction of the Business of the Government of the State. The Governor framed the Business Rules of 1983 (Annexure R-2) in exercise of the said power, Schedule I thereof envisages Vigilance as one of the Departments, which is put under one of the Advisers as envisaged by rule 6 and defined by clause (a) of rule 2.

56. The Governor in exercise of the powers under rule 6 of the 1983 Business Rules issued standing Orders (Annexure R-3), thereby providing that the cases of the Vigilance Department shall be disposed of by the Authorities, as indicated in the statement attached. The statement referred to in the Annexure, which forms part of Annexure R-3, *inter alia* gives details of the cases to be disposed of by the Governor, which are reproduced again for the sake of facility and are as follows:—

"(i) All Policy Matters;

(ii) Prosecution, dismissal, removal, compulsory retirement or the imposition of major penalty on any gazetted officer, heads of semi-government. institutions (Chairman, Managing Director and Executive Director, etc., and Government employees, appointed by any authority above the level of Secretary)."

57. Perusal of the above statement would show that the Governor had reserved to himself *inter alia* right to prosecute, dismiss, remove any gazetted officer of semi--Government/Institutions and Government Employees appointed by any authority above the level of Secretary and also impose penalties on them.

58. Rule 17 of the Service Rules *inter alia* envisages conduct of the disciplinary inquiries/departmental inquiries in accordance with the provisions of Punishment and Appeal Rules.

59. Rule 7 of the Punishment and Appeal Rules by name authorises the Governor to institute disciplinary proceedings or authorise any other authority by general or special orders to do so.

60. In the present case, perusal of the charge-sheet, already adverted to, would show that it was the Governor, who had instituted the inquiry and had appointed the inquiry officers.

61. It was, however, canvassed on behalf of the petitioners that it was not the Governor who had actually instituted the inquiry, but it was the Adviser, who had instituted the inquiry. Support for this submission was sought from the following assertion in the written statement: —

> "The charge-sheet to the petitioner was issued after obtaining approval of the then Adviser to the Governor-in-charge of the Vigilance Department who was competent to do so under rule 6 of the Rules of Business of the Government of the Punjab, 1983, framed by the Governor of Punjab and the standing order issued thereunder, * * *."

62. There is no merit in this contention for the reason that the reply in the said paragraph has to be co-related to the assertion by the petitioner in the corresponding paragraph of the petition.

63. A perusal of the relevant paragraph of the petition would show that the petitioners had not asserted that the charge-sheet had been issued by the Adviser and not by the Governor. And in any case, to say that the charge-sheet had the approval of the Adviser does not mean that it had not received the approval of the Governor.

64. Secondly, the perusal of charge-sheet (Annexure P-3) would show that the same had been issued under the name of the Governor and had been duly authenticated. Once an order of the Governor is duly authenticated, no one is permitted to say and show that the order in fact is not that of the Governor, as the case had not

been placed before him. As has been held by their Lordships in *The State of Bihar* v. *Rani Sonabati Kumari* (7), the following observations of their Lordships in this regard deserve notice:—

Para (40):

"Section 3(1) of the Act confers the power of issuing notifications under it, not on any officer but on the State Government as such though the exercise of that power would be governed by the rules of business framed by the Governor under Article 166(3) of the Constitution. But this does not afford any assistance to the appellant. The order of Government in the present case is expressed to be made "in the name of the Governor" and ise authenticated as prescribed by Article 166(2) and consequently "the validity of the order or instrument cannot be called in question on the ground that it is not an order or instrument made or executed by the Governor."

Para (42):—

"The only point canvassed is whether it was an order made by the Governor or 'by some one duly authorised by him in that behalf within Article 154(1). Even assuming that the order did not originate from the Governor personally, it avails the State nothing because the Governor remains responsible for the action of his subordinates taken in his name. In 72 Ind. App. 241: (AIR 1945 PC 156) already referred to, Lord Thankerton pointing out the distinction between delegation by virtue of statutory power, therefor, and the case of the exercise of the Governor's power by authorized subordinates under the terms of Section 49 (1) of the Government of India Act, 1935 corresponding to Article 154(1), said:

"Sub-section 5 of Section 2 (of the Defence of India Act, 1939) provides a means of delegation in the strict sense of the word, namely, a transfer of the power or duty to the officer or authority defined in the sub-section, with a corresponding divestiture of the Governor of any responsibility in the matter, whereas under

(7) A.I.R. 1961 S.C. 221.

Section 49(1) of the Act of 1935, the Governor remains responsible for the action of his subordinates taken in his name."

The above view was reiterated by their Lordships in *Ishwarlal Girdharlal Joshi, etc.* v. *State of Gujarat and another* (8), as would be clear from the following observation occurring at page 875:—

"It is obvious that the executive action of the Government was in fact expressed to be taken in the name of the Governor, that the orders were authenticated in the manner required by rule 13 of the Rules of Business already quoted. The validity of the order could not, of course, be called in question that it was not an order made by the Governor. Had the Government sheltered itself behind the constitutional curtain, it is a little doubtful if the appellants could have successfully pierced this barrier by merely stating that the Government had not passed the orders or made the necessary determination without alleging definite facts. In addition to the constitutional provision there is also the presumption of regularity of official acts. Orders of Government, whether at ministerial or gubernatorial level, are all issued in the same form and the constitutional protection as well as the presumption both cover the case."

65. During the President's rule, the President could transact the executive business of the Government and take all executive actions in that regard through the Governor, as already observed.

66. The nature and the extent of the power of the Governor during the President's rule came up for consideration before Calcutta High Court in *Gokalananda Roy* v. *Tarapada Mukharjee and others* (9), and *Mrinal Kanti Das Burman and others* v. *State of W. Bengal and others* (10), and before Madras High Court in *Associated Transports (Madras) Private Ltd.* v. *The Union of India and others* (11).

(8) A.I.R. 1968 S.C. 870.
(9) A.I.R. 1973 Cal. 233.
(10) 1977 Lab. I.C. 628.
(11) A.I.R. 1978 Madras 173.

67. In *Gokalananda Roy's case* (supra), the facts were that on 19th March, 1970, a proclamation was issued by the President whereby he assumed to himself all the functions of the Government of the State and all powers vested in or exercisable by the Governor of the State. The Governor appointed Commission of Inquiry under section 3 of the Commissions of Inquiry Act, 1952 by notification dated 28th April, 1970. The validity of the order appointing the Commission of Inquiry was challenged before the Court on the ground that the President having assumed to himself all the functions of the Government of the State and all powers vesting in the Governor, it was for him alone to be satisfied that an inquiry under the Act was called for and also about the necessity of such inquiry. In other words, the President alone to the exclusion of any other authority, was to be satisfied about the necessity of any inquiry into a matter of public importance and on being so satisfied, the President could alone issue the notification under section 3 of the Commission of Inquiries Act and the Governor had no authority or jurisdiction to issue such a notification.

B. C. Mitra, J., who spoke for the Bench, after referring to the proclamation issued by the President, where it is mentioned—

> "I hereby direct that all the functions of the State of West Bengal and all the powers vested in or exercisable by the Governor of the State under the Constitution or under any law in force in that State, which have been assumed by the President of India by virtue of Clause (a) of the said Proclamation, all subject to the superintendence, direction and control of the President of India, be exercisable also by the Governor of the said State.".

held that the Governor in making the order for inquiry acted by virtue of the delegation made in his favour and in a case of delegation of power, where the power and duties and statutory obligations, are so interwoven, interconnected and inter-dependent, could it be said that the power and the duty could be so separated and distinguished, that the delegation of the power only could be made, leaving the duty or statutory obligation with the principal ? The answer to both these questions must be in the negative. The delegation of the power in a case, such as this, operates as an implied delegation of the duties and the statutory obligations as well. It could not be held that while the power to appoint a Commission of

Inquiry stood delegated to the Governor, the duty and the statutory obligation to form an opinion about the necessity of such an inquiry remained vested in the President. To hold otherwise, would be creating a situation where the exercise of the power itself would be invalid. Because, in that case the President would have to form the opinion about the necessity of the inquiry and having formed such an opinion, he would have to leave it to the Governor to make the order appointing the Commission of Inquiry, though the Governor has formed no opinion about the necessity of such an inquiry.

68. Yet another contention that came up for consideration before the Court was to the effect that by the Proclamation, the President had assumed to himself the powers of the State Government and State Governor and it was for him alone to discharge the duties and obligations of the State Government and the Governor and he could not divest himself of the powers, which he had lawfully assumed to the State Governor.

B. C. Mitra, J., repelled the above contention with the following observations:—

Para 18: (*in Gokulananda Roy's case, supra*):

"In my view, there is hardly any merit in this contention of counsel for the appellant. It is true that by the Proclamation the President had assumed to himself the powers of the State Government, as also those of the Governor of the the State. It is also true that upon such assumption of power, the State Government and the Governor stood divested of their powers, functions and duties under the Constitution. But it cannot be overlooked, and it should not be overlooked, that Article 356 itself enables the President when a Proclamation is made under that Article to make incidental and consequential provisions. These incidental and consequential provisions are such as may appear to the President to be necessary for giving effect to the objects of the Proclamation. The terms of Clause (c) of Article 356(1) make it abundantly clear that, what incidental and consequential provisions are to be made, is a matter entirely for the subjective satisfaction of the President. The validity or legality of the incidental and consequential provisions contemplated by Article 356(1)(c)

is not justiciable. The President makes the Proclamation on being satisfied from a report of the State Governor or otherwise, that a situation has arisen, in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. On being so satisfied, the President makes the Proclamation assuming to himself the functions of the State Government, as also the powers vested in or exercisable by the State Governor. After assumption of power by the President under Article 356(1)(a), the President is enabled to make such incidental and consequential provisions as appears to him to be necessary for giving effect to the objects of the Proclamation. And it is an exercise of the powers, assumed by him by Clause (c)(i) of the Proclamation, that the President delegated all the functions of the Government of the State and all the powers vested in or exercisable by the Governor of the State, to the later, subject to the superintendence, direction and control of the President himself. Apart from the question of the validity of an absolute delegation of power by the President to the Governor, resulting in a complete divestiture of the powers and functions which the President had assumed by reason of the Proclamation, it is to be noticed that the notification C.S.R. 491 explicitly provides that the powers and functions delegated to the Governor, are to be exercised by the later, subject to the superintendence, direction and control of the President of India. This provision in the notification leaves no room for doubt, that the President of India retained full control and superintendence over the Governor who exercises the powers delegated to him by the notification. The second answer to the contention that there was complete abdication of powers and duties by the President to the Governor, is to be found in the last few words of the notification itself, namely "be exercisable also by the Governor of the said State." The word "also" appearing in the notification should not be lost sight of, in dealing with this question. It is quite clear that there is, by no means, a complete abdication or surrender of the powers, duties and functions which the President assumed by the Proclamation in favour of the Governor, as the President retains in his own hands, the authority and the jurisdiction to act, by

virtue of the assumption of power under the Proclamation This, in my view, is the answer to the contention on behalf of the appellant that the notification should be construed to mean a complete abdication of power by the President in favour of the Governor. The President, in my view, has not surrendered or abdicated his powers, functions and duties absolutely to the Governor. He retains the power of direction, superintendence and control in his own hands and furthermore, he retains to himself the power to act on his own without reference to the Governor, to whom the powers and functions have been delegated by the notification, G.S.R. 491. In this view of the matter, the contention on behalf of the appellant that the Governor was not validly authorised to make the order, appointing the Commission of Inquiry, or that the order is *ultra vires* the powers of the President, as it amounts to an abdication of his powers, cannot be upheld."

The Division Bench in *Mrinal Kanti Das's case* (supra), reiterated the above view enunciated in *Gokulananda Roy's case* (supra):—

69. In *Associated Transports's case* (supra), the facts were that the appellant before the Court was a stage carriage operator and among other permits, he was operating one permit on the inter-State Route, Madras (Mint.) to Naidupet. The State of Tamil Nadu formulated a policy of nationalisation of bus routes, the distance of which exceeded 75 miles or when the route touched the city of Madras. The route was covered by a draft scheme of nationalisation under section 68-C of the Motor Vehicles Act. A scheme of nationalisation was issued by the Secretary to Government by virtue of the delegated powers vested in him under rule 23-A of the Madras Business Rules. The appellant filed his objections to the draft scheme. The third respondent issued a notice of hearing to consider the objections filed by the appellant under section 68-D of the Act. The hearing was posted to 24th May, 1976. The appellant filed a writ petition for the issue of a writ of prohibition prohibiting the respondents from taking any further proceedings pursuant to the said notice dated 5th May, 1976. The writ was dismissed. Before the Division Bench, in appeal, counsel for the appellant Mr. K. K. Venugopal, canvassed that the Governor had acted without authority, as, according to him, it was not open to the Governor to bring

into existence a Cabinet system of Government consisting of two Advisers appointed by him between whom he had distributed all the portfolios to enable them to finally decide all maters. Learned counsel further submitted that the functions of the Secretary acting under section 68-D of the Act was quasi-*judicial* in nuature, that those functions were withdrawn by the President and transferred to the Governor, and that the Governor alone could discharge those functions.

P. S. Kailasam, C.J., (as he then was) speaking for the Court repelled the contention of the learned counsel with the following observation: —

> "Though the position of the Governor under the Proclamation is one in which he is empowered to exercise all the functions taken over by the President, subject to the superintendence, direction and control of the President, it will be totally inappropriate to call the Governor a delegate or an agent. The result is that the Governor acts as if the President himself acts, subject of course, to the superintendence, direction and control of the President. If this position is clear, most of the contentions of the learned counsel for the appellant loose their force, as they are mainly based on the basis that the Governor is a delegate and that he cannot further delegate the powers delegated to him."

70. With respect, we entirely concur in the aforesaid enunciation of the nature of the power of the Governor and his actions in exercise thereof, by the Calcutta High Court and the Madras High Court in the above quoted cases.

71. For the reasons aforementioned we hold that at the time when the departmental proceedings were launched, the Governor was the ultimate appointing as-well-as the Punishing Authority *qua* the petitioners. He was competent to initiate the departmental inquiries against the petitioners, being the punishing authority. He was even otherwise competent to initiate the proceedings by virtue of the express power contained in rule 7 of the Punishment and Appeal Rules, as already observed being the *persona designata*. After the lapse of the President's rule, it would be competent for the Chief Minister to order initiation of the departmental proceedings regarding any employee belonging to any department, he being the final

punishing authority of any gazetted officer by virtue of clause (vii) of rule 28 of the Punjab Rules of Business, 1985.

72. In fact by virtue of rule 28(1)(ii) he can call for the file of any case pertaining to any employee and pass the final order and thus, he could be treated as the ultimate Punishing authority of any employee of any department, who may not necessarily be of the status of the gazetted officer and, therefore, he could order initiation of the inquiry regarding any officer/employee of the State Government.

73. Now, the stage is set to take notice of submissions peculiar to Mr. A. K. Ummat (petitioner in C.W.P. No. 6558 of 1986).

74. Mr. K. K. Jagia, the learned counsel for Mr. A. K. Ummat, contended that the departmental inquiry for the purpose of imposing punishment could not survive after the retirement of the petitioner as it lapsed with his retirement. In support of his above submission, he sought support from two decisions *Subha Rao* v. *State of Mysore and another* (12), and *Municipal Committee, Dina Nagar* v. *The Commissioner, Jullundur Division and others* (13).

75. It is not necessary to deal with this contention or the authorities that he has cited in support thereof, because the learned counsel for the State has stated at the Bar that the departmental inquiries in question were being continued against the petitioners Mr. A. K. Ummat and Mr. D. P. Singla not for the purpose of imposing punishment but for the purpose of taking action under rule 2.2 (b) of the Punjab Civil Service Rules (Vol. II), (for short 'C.S.R.'), which is in the following terms:—

> "*R.* 2.2.(*b*)" The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the

(12) 1967 S.L.R. 235.
(13) 1977 S.L.W.R. 313.

pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that—

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment—

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

Explanation.—For the purpose of this rule—

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued

to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

* * * * *

76. Mr. Jagia has, however, contended that the said departmental inquiries could be continued after the retirement of the petitioner in terms of rule 2.2(b) of the C.S.R. only if the Government had in the first instance taken a conscious decision to continue the said departmental inquiry for the above purpose and had intimated the petitioner of its decision in this regard. The competent authority the learned counsel contends had done nothing of the kind, so the continuation of the departmental inquiry, is clearly illegal and invalid and, therefore, deserved to be quashed.

77. In support of above submission, Mr. Jagia placed reliance on a Full Bench decision of the Kerala High Court in *R. P. Nair and another* v. *Kerala State Electricity Board and others* (13), *S. Partap Singh* v. *State of Punjab* (15), and a Division Bench decision in *Girija Kumar Phukan* v. *State of Assam and others* (16).

78. The proposition of law that was under consideration in *R. P. Nair's case* (supra), was as to whether disciplinary proceedings started while an employee was in service, could be continued for imposing punishment on him after his retirement or termination of service. On behalf of the respondent-State Electricity Board, reliance was placed on rule 3 part III, Chapter I of the Kerala State Electricity Board (Employees' Disciplinary Proceedings Tribunal) Regulations 1969 (hereinafter called 'the K.S.R.') to show that the respondent had the requisite power to continue the disciplinary proceedings for the purpose of imposing punishment. Rules 3 of the K.S.R. is almost *part materia* with rule 2.2 (b) of the C.S.R.

79. V. P. Gopalan Nambiyar, C.J., who delivered the opinion for the Bench repelled the contention with the observations "that the said rule did not authorize the continuance of the disciplinary proceedings as such against a Government servant after his retirement. It allows only a limited type of inquiry to be proceeded with,

(13) 1979 (1) S.L.R. 384.
(14) A.I.R. 1964 S.C. 72;
(15) 1985 (3) S.L.R. 658.

namely an inquiry in regard to withholding or withdrawing pension or ordering recovery from pension by reason of any misconduct or negligence during the period of the service of the employee. Under clause (a) of the proviso to the rule, the departmental proceedings if instituted during the service of the employee is to be deemed to be a proceeding under the rule and may be continued and completed even after his retirement. To this limited extent alone is provision made under the rule for continuance of a disciplinary enquiry beyond retirement. That too is by transmuting it by fiction to be an enquiry under the Rule. Beyond this, they could not understand the rule as in any way permitting the authorities either to launch or to continue disciplinary proceedings after the retirement of the employee. That would be destructive of the concept of relationship of employer and employee which has come to an end by the reason of the retirement of the employee, beyond which, disciplinary control cannot extend."

80. The aforesaid observations of V. P. Gopalan Nambiyar, C.J., do not lend any support whatsoever to the contention advanced by Mr. Jagia. In *R. P. Nair's case* (supra), the respondent-Electricity Board had pressed into service the provision of rule 3 of K.S.R., as being the provision which enabled the Government to continue the disciplinary proceedings for punishment even after the retirement of the employee. Such is not the case here. In the present case, proceedings are being continued only for the purpose of exercise of power for imposing cut in the pension in the event of eventualities envisaged in rule 2.2(b) of the C.S.R.

81. In *S. Partap Singh's case* (supra), we have been referred to by Mr. Jagia to the following observation occurring in paragraph 103 of the judgment:—

> "Another submission for the appellant to establish his case of *mala fides* against the respondent is that the Government having sanctioned him leave, need not have taken recourse to suspending him and revoking his leave, but could have taken adequate action against the appellant under R. 2.2(b), Vol. II, 1941 rules, if he was found guilty of grave misconduct as a result of the departmental proceedings the Government was to institute against him. The mere fact that Government took one type of action open to them and not the other, is no ground to hold the

Government action *mala fide*. Further, resort to R. 2.2(b) could have been taken only if the appellant was found guilty of grave misconduct and it would have been always a debatable point whether the charges made out against him established grave mis-conduct or simple misconduct. Action under that rule can be taken only in limited circumstances."

82. *Shri Partap Singh's case* (supra), was a case in which the Government extended his period of superannuation so that the disciplinary proceedings contemplated against him could be continued. It was contended on his behalf before the Supreme Court that that circumstance proved the *mala fides* on the part of the concerned authority, because the concerned authority could have taken adequate action against the appellant under rule 2.2(b) of the C.S.R. too. Their lordships repelled that contention by observing that from the mere fact that the Government took one type of action open to them and not the other, was no ground to hold that the Government action was *mala fide*. They further observed that in any case resort to rule 2.2(b) could have been taken only if the appellant was found guilty of grave misconduct and it would have been always a debatable point whether the charges made out against him established grave misconduct or simple misconduct. Action under that rule can be taken only in limited circumstances.

83. The above observations do not in any manner suggest that the Government had first to take a decision to take action in terms of rule 2.2(b) of the C.S.R., and then the competent authority in the light of the same, had to take further decision as to whether the departmental inquiries are to be continued against the petitioner or not and if it had decided to do that, then to send an intimation to the employee concerned of the said decision.

84. Now, we come to the decision, on which Mr. Jagia in fact primarily relies, of the Division Bench of the Gauhati High Court in *Girija Kumar Phukan's case* (supra). This decision requires to be analysed in some details:

That was a case of an employee of the Transport Department, who, on the date of the retirement held the charge of the Office of the General Manager of the Assam State Road Transport Corporation. In the year 1968, the Government of Assam appears to have

detected some cases of misappropriation of the government money, in the Poll Transport. Charges were drawn up against one M. M. Pujari, Transport Officer (Poll). A show cause notice was also required to be issued to Girja Kumar asking him why action should not be taken against him. It was mentioned in the said show cause letter that he had not been vigilant and that he had not exercised necessary checks and scrutiny as Drawing and Disbursing Officer, Girija Kumar submitted his explanation, denying all charges on 22nd February, 1970, and thereafter the mater remained silent, till 8th April, 1975, when a fresh disciplinary proceeding, as such was initiated. The main charge of negligence and dereliction of duty amounting to gross misconduct was related to his duties and responsibility as Drawing and Disbursing Officer in which capacity he was said to have failed to exercise strict supervision and control on his subordinates, including the Cashier, namely Romesh Borthakur. Criminal proceedings for defalcation were started against Romesh Borthakur which ended in his acquittal and said officer was reinstated with effect from 7th November, 1982. However, the proceedings against the petitioner continued after he showed cause on 6th June, 1975, denying all charges. These proceedings remained in animated suspension till when the petitioner came to be superannuated on 31st March, 1983. The petitioner after his retirement challenged the continuance of said departmental proceedings after his superannuation. The Assam Government relied upon rule 21(a) of the Assam Services (Pension) Rules, 1969, for doing so. The proposition of law, which Dr. T. N. Singh, J., who prepared the opinion for the Bench, proposed for determination, was in his own words was:—

> "Can we, therefore, read Rule 21 as conferring power on the Government to punish its ex-employee for anything done by him while in service and for that matter continuing a disciplinary proceeding with that object, though initiated before he ceased to be in service?"

85. So far as the above proposition of law is cocnerned, the answer is not in doubt. For the purpose of imposing punishment, disciplinary proceedings pending against the employee cannot be continued after his superanuation, because the power conferred by rule 21 of Assam Pension Rules, *ibid,* which is in *pari materia,* with rule 2.2(b) of the C.S.R. enables the continuation of the disciplinary proceedings only for the limited purpose, envisaged therein and not for the purpose of imposing punishment. If viewed from that angle,

the ratio of this judgment falls in the category of ratio of Kerala Full Bench Judgment in *R. P. Nair's case* (supra), and is of no help to the petitioner.

86. Dr. T. N. Singh, J., had, however, also considered the circumstances and the manner in which the departmental proceedings could be continued under rule 21 for the limited purpose of that rule and it is the observation of the learned Judge in that regard that are being relied upon on behalf of the petitioner in this case.

87. The learned Judge first referred to the provision of various rules, detailing the manner in which the authority which has to grant the pension has to proceed well before the time of the retirement of the concerned employee so that he does not have to wait for his pension after retirement. References are also made to the rule which emphasizes that any dereliction of duty on the part of the Pension sanctioning authority, which may result in delayed sanctioning of the pension, shall be considered a misconduct. The learned Judge rightly observed that the various rules, in question, had the expeditious processing of the pension case of retiring employee as the object in view and that the said object was reflected in rule 21 also according to him. He observed that rule 21, Clause (a) of the Assam Services (Pension) Rules, envisaged continuance of the pending departmental proceedings for the purpose of limited action under rule 21 in order to avoid a delay in the sanctioning of the pension, which would be the result if *de novo* proceedings were to be initiated under rule 21, clause (b).

88. According to the learned Judge, the pending disciplinary inquiry could be continued after his retirement for the purpose of action under rule 21 only if in the first instance the Governor of Assam (in case of the present petitioners, the State Government) had contemplated the action envisaged in rule 21. Unless such action had been contemplated by the Assam Governor, the author rity, which was holding the disciplinary inquiry prior to the retirement of the Government servant would have no jurisdiction to continue the same. If he was to do so, it would tantamount to his exercising the power under rule 21, which was expressely confered not on him but on the Governor of Assam. The learned Judge felt strengthened in the above view by provisions of clause (b) which mandates the sanction of the Governor to be obtained for *de novo*

proceedings envisaged by that clause. The learned Judge also felt that bar created for a *de novo* inquiry by clause (b) in respect of events (beyond four years) had also to be taken into consideration by the Governor while contemplating action under rule 21.

89. With great respect to the learned Judge, the above interpretation of rule 21, does not appeal to us.

90. Rule 21 does not as a condition precedent envisage that the Governor must contemplate action of withholding or withdrawing of pension or any part of it whether permanently or for a specified period or of ordering the recovery from the pension for whole or part of any of the pecuniary loss caused to the Government, Rule 21 only creates a legal right in the Governor to take the said action, but it qualifies that right by mentioning the eventualities in which the said action or taking a decision of taking action of the kind comes not during the pendency of the disciplinary proceedings (either during the period of the proceedings before superanuation or the period of the proceedings after superannuation), but after the conclusion of such proceedings, when the Inquiry Officer gives a finding that the delinquent officer was guilty of grave misconduct or negligence during the period of his service, including the service rendered upon re-employment after retirement. So, the continuance of the disciplinary proceedings after superannuation as envisaged by clause (a) of rule 21, is not dependent upon prior contemplation of any action in terms of rule 21 on the part of the Governor.

91. The two requirements envisaged by sub-clause (i) and sub-clause (ii) of clause (b) refers to the conditions on the satisfaction of which the *de novo* inquiry for the purpose of action under rule 21 could be started against the retired government employee. The rule-making authority is making a distinction between the disciplinary proceedings initiated prior to the retirement for the purpose of imposing punishment and the proceedings to be indicated after retirement for the limited purpose of action in terms of rule 21. The disciplinary proceedings initiated by the authority other than the Governor were deemed to be proceedings for the purpose of action in terms of rule 21, clause (a). The underlying object of the same may be, as the learned Judge had divined, of obviating delay which would be the result if the inquiry for the purpose of rule 21 was to be started *de novo.*

92. The four years' limit envisaged by sub-clause (ii) of clause (b) again had a sensible purpose, which was relevant only to a *de novo* proceeding. The idea being that if an event in antiquities is dug up against the retired employee regarding which even the requisite evidence which could prove his innocence may even have been lost, it would be unfair to the employee to confront him with the inquiry pertaining to such stale events of misconduct, whereas in the case of an already pending departmental inquiry, the position is otherwise. For starting valid departmental proceedings, no such condition is envisaged in the rules. If for a given nature of misconduct an employee could be dismissed or removed from service, then we see no reason as to why for the same grave-misconduct, a lesser penalty of reduction in pension could not be imposed after successful conclusion of such an inquiry. Such an inquiry may have reached almost the final stages of submission of the inquiry report, when the employee reaches the stage of superannuation. It could no doubt be urged as to what would be the position of the departmental inquiry which may have been launched only a day before the date of the retirement, regarding a stale event. In what manner would it be different from an inquiry launched in terms of rule 21 on the next day of the retirement regarding the very same stale event ? Answer to the above query would be that since the deemed validity of pending proceedings could not reasonably be predicated, on the basis of time which was to elapse between the initiation of such inquiry and the date of the retirement. In other words, it could not reasonably be said that only a disciplinary inquiry started, say — six months, one year, two years *et cetera* before the retirement would continue after retirement, for the limited purpose of action under rule 21, therefore, all pending departmental inquiries of the kind against the retiring employee, were deemingly assumed to be the inquiries for the purpose of action under rule 21 and the competent authority was required to continue the same.

93. The second contention that prevailed with the learned Judge of the Gauhati High Court was that before the pending disciplinary proceedings could be deemed to be proceedings for the purpose of rule 21, the competent authority must take a conscious decision on or before the date of his retirement of the employee as to whether the said proceedings were to be continued for the limited action under rule 21 or not; that if the authority was to decide that such proceedings should continue, then, in that case the authority must intimate its decision in that regard to the employee. The learned

Judge reasoned that clause (a) and clause (b) merely provided the modalities of taking action under rule 21. These clauses could not be read as 'provision' in the technical sense. Clause (a) could not be read to mean that in virtue thereof there would be an automatic continuation of a pending disciplinary proceeding against an ex-employee because such provision was not meant to resurrect a dead proceeding, a proceeding which could only be co-extensive with the tenure of service of the employee. If clause (a) is construed to mean that in virtue thereof a pending proceeding against an ex-employee must be continued then in all cases in all pending proceedings this must be done in anticipation of action to be taken under rule 21 by the competent authority whether or not such action is warranted thereunder. That construction would certainly produce an absurd result. Besides, there would be a scope for cimplaints of arbitrary action if such proceedings are not continued in all cases and the disciplinary authority at its whim decides to pick and choose. Such a construction must, therefore, be ruled out as it would be unconstitutional.

94. With respect, we find ourselves unable to subscribe to the aforesaid reasonings. We must be first clear as to which disciplinary proceedings are deemed by clause (a) of rule 21 to be proceedings under rule 21. Clause (a) qualifies the departmental proceedings by using the word "such". That means clause (a) deems 'only such departmental proceedings as the proceedings under rule 21 in which on the basis of charges levelled against the employee a finding of grave misconduct or of negligence could be given. If a pending disciplinary inquiry, in which on the basis of the charges no such finding can be given is continued, it would be open to the concerned employee to challenge such proceedings, for in our view such proceedings must automatically lapse on the date of the retirement of the employee. Clause (a) envisages two things in regard to the pending departmental proceedings in which a finding of grave misconduct or of negligence could be returned :

(i) that such proceedings on the retirement of the employee would be deemed to be proceedings for purposes of rule 21;

and

(ii) that such proceedings should continue and be concluded by the very same authority which had commenced it.

95. In view of above statutory assumption regarding the deemed nature of the proceedings and the direction to continue, the

authority would have no option but to continue the proceedings and, therefore, the question of pick and choose on the part of such authority as apprehended by the learned Judge, does not arise. The date of retirement would not put a pause on the continuation of the said proceedings, say for instance if before the date of retirement, the Inquiry Officer had fixed a date, say for the evidence of the employee and that date happened to fall on any day after the retirement. The employee is not to wait for any further signal from the authorities. He is to lead his evidence on that date.

96. It would however be desirable on the part of the competent authority to consider the position of the pending disciplinary proceedings with reference to the date of retirement of the employee and that if the pending proceedings were such in which a finding of a misconduct or of negligence cannot be returned then it would be appropriate to pass an order to discontinue such proceedings to avoid harassment to the retiring employee, but such a decision is not a condition precedent for the continuation of such pending departmental proceedings for the purpose of rule 21 in which on the basis of the charges, a finding of grave misconduct or negligence could be given.

97. In the present case, we had invited the learned counsel for the petitioners to tell us as to whether a finding of misconduct could be returned on the basis of the charges levelled against the petitioners in the charge-sheet. The learned counsel frankly conceded that on the basis of the charges in the charge-sheet the petitioners could be dismissed from service if they had been in service. A charge which can invite punishment of dismissal, in our opinion, can certainly be considered to be grave.

98. For the reasons aforementioned, we hold that pending departmental inquiries are being validly continued against the petitioners for the purpose of rule 2.2(b) of the C.S.R.

99. Whatever has been said regarding Shri A. K. Ummat is *mutatis-mutandis* valid in regard to Mr. D. P. Singla so far as the valid continuation of disciplinary proceedings in term of rule 2.2(b) of the C.S.R. is concerned.

100. Mr. P. N. Pathak, the learned counsel for Mr. D. P. Singla, however, appeared to think that since Inquiry Officer in regard to

the charge-sheet served upon him was appointed for the first time after the retirement of the petitioner Mr. D. P. Singla, so the inquiry must be deemed to have been started after his retirement and since it does not fulfil the requirement of clause (b) regarding sanction and the time limit, so it must be considered void *ab initio*. It must be observed for the benefit of Mr. Pathak, and that explanation to clause (b) of Rule 2 tells us as to when the departmental proceedings shall be instituted. According to the explanation, the date on which the statement of charges is issued to the officer *inter-alia* is the date on which the departmental proeeedings shall be deemed to be instituted. That event in so far as Mr. D. P. Singla is concerned is placed much before the date on which he retired.

101. For the afore-mentioned reasons, we find no merit in these writ petitions (C.W.P. 6298, C.W.P. 6518 and C.W.P. 6308 of 1986) and dismiss the same with no order as to costs.

H.S.B.

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