

(3) Having perused the orders in the light of the grounds taken in these petitions, I find that the above noted conclusions are well founded. A bare reading of section 124 of the Indian Evidence Act, indicates that privilege can be claimed with regard to documents or communications where (i) the communication has been made to a public officer in official confidence; and (ii) the officer concerned must feel or be satisfied, that public interest would suffer if the disclosures of the communication in question is made. The trial Court has rightly recorded that the Divisional Manager of the Bank from whom the documents had been summoned was neither a public officer nor had the privilege been claimed by him in his official capacity. On the contrary, it was the plaintiff-Bank, who claimed the protection of section 124 of the Indian Evidence Act. Further, it is difficult to comprehend as to how and why the records from an enquiry filed conducted against the Bank official if disclosed would injure or affect public interest. In this regard, a reference can be made to *S. P. Gupta and others v. President of India and others* (1), in support of this conclusion of mine. In that case, even the correspondence exchanged between the Law Minister, Government of India, Chief Justice of the High Court, the State Government and the Chief Justice of India and other relevant notings in the files were declined the privilege under section 124 of the Indian Evidence Act. Therefore, I find no merit in these petitions and the same are dismissed with no order as to costs.

P.C.G.

(FULL BENCH)

Before : Harbans Singh Rai, A. P. Chowdhri & J. B. Garg, JJ.

PARKASH KAUR,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Criminal Misc. No. 4893-M of 1988.

18th December, 1990.

Criminal Procedure Code, 1973 (II of 1974)—Ss. 4, 6 & 482—Constitution of India, 1950—Art. 226—Terrorists and Disruptive Activities (Prevention) Act, 1985—Ss. 2 & 9—Inherent powers of High Court provided by Statute—No express provision excluding jurisdiction of High Court by 1985 Act—Offences triable by Designated Courts—High Court—Whether can exercise powers under inherent jurisdiction.

(1) A.I.R. 1982 S.C. 149.

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Held, that a survey of the provisions of the Act shows that there is no provision expressly ousting jurisdiction of the High Court in respect of the cases under the Act. The question remains whether the jurisdiction of the High Court has been excluded by necessary implication. If the intention of the Parliament were to exclude the jurisdiction of the High Court altogether, it could be easily so provided in the Act. This is consistent with the settled proposition of law that exclusion of jurisdiction especially of the High Court which has constitutional character, is not to be readily inferred.

(Para 8)

Held, that sub-section (2) of S. 4 deals with offences under "any other law" and provides that the provisions of the Code of Criminal Procedure would apply in all the abovenoted matters i.e., investigation, enquiry, trial and for being otherwise dealt with subject to any provision to the contrary in such other law. The offences under consideration in the present case are those under the Act which is a law other than Indian Penal Code. Sub-section (2) is, therefore, attracted. It follows that the Code of Criminal Procedure would apply in matters of investigation, enquiry, trial and other matters subject to any special provision in the Act. It has also been seen that S. 482 of the Code has not been either expressly or impliedly touched by any provision of the Act. It follows that there is nothing in the Act to affect the application of S. 482 of the Code in relation to offences triable by the Designated Court.

(Para 9)

Held, that S. 6 of the Code, while laying down the various classes of Criminal Courts expressly makes a mention of (a) the High Court, and (b) Courts constituted under any law. The Designated Court is evidently a court constituted under the Terrorist and Disruptive Activities (Prevention) Act. It has been seen that it is presided over by a person who is a Sessions Judge or any Additional Sessions Judge [*vide* S. 9(6)]. The Designated Court enjoys all the powers of the Court of Session,—*vide* S. 14(3) and it is a court of ordinary criminal justice,—*vide* S. 23(2). Article 226 of the Constitution invests the High Court power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III and for any other purpose. The fundamental rights include the right to life or personal liberty.

(Para 10)

Petition under section 482 Cr.P.C. read with Article 227 of the Constitution of India praying that the F.I.R. No. 98 registered at P. S. Divn. No. 4 Jalandhar be quashed. Under section 153A, 124A IPC and section 3/4 Terrorists and Disruptive Activities Act.

It is further prayed that during the pendency of this petition in the High Court, further proceedings in matter (F.I.R.) be stayed.

G. S. Grewal, Sr. Advocate, with Baljit Kaur, Advocate, for the Petitioner.

H. S. Bhullar, D.A.G. Punjab, for the Respondents.

JUDGMENT

A. P. Chowdhri, J.

(1) Whether the inherent powers of the High Court under section 482 of the Code of Criminal Procedure, 1973, stand ousted because of the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1985, is a question of grant moment raised in these five petitions i.e. Crl. Misc. Nos. 4893-M of 1988, 3941-M of 1989, 4164-M, 4948-M and 4978-M of 1990 ?

(2) The facts leading to this petition i.e. Crl. Misc. 4893-M of 1988 are that a first information report under sections 153-A and 124-A of the Indian Penal Code and sections 3/4 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as 'the Act') was registered at Police Station Division No. 4, Jalandhar, against the petitioner who is Editor, Printer and Publisher of the daily Punjabi Paper 'AJIT'. She moved the present petition for quashing the first information report on the ground that assuming the facts mention therein to be true, no offence was disclosed either under the Indian Penal Code or the Act. When the petition came up for hearing, the learned Advocate-General, Punjab, opposing the petition, raised a preliminary objection. It was contended that this Court had no jurisdiction to hear the petition. Reliance was placed by the learned Advocate-General on certain observations in *Usmanbhai Dewoodhhai Memon and others v. State of Gujarat* (1), and *Kumar Singh Chhajor and others v. Emperor* (2). One of us (Harbans Singh Rai, J.) observed that *Usmanbhai's* case held jurisdiction of the High Court barred in relation to grant of bail both under section 439 as well as section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'). It was nowhere held that the High Court could not exercise its inherent jurisdiction in any situation whatsoever in a case registered under the Act. The learned Judge also observed that the conclusion that the High Court had no jurisdiction for offences under the Act would result in great hardship to a large number of people and would give arbitrary powers to the police. As the question involved was of great importance and kept arising in a large number of cases, it was referred to a larger Bench by order dated September 9, 1988. The matter came up before a Division Bench of this Court and by

(1) A.I.R. 1988 S.C. 922.

(2) A.I.R. (33) 1946 Privy Council. 169.

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order dated October 4, 1988, the said question was referred to a Full Bench. This is how the matter has been placed before us. All the aforementioned petitions shall be disposed of by this common judgment.

(3) Shri G. S. Grewal, learned counsel for the petitioner, has raised a number of contentions. It will be convenient to summarise the same in the form of the following points :—

- (i) The Act does not expressly bar jurisdiction of the High Court and no such bar of jurisdiction can be read into the Act by necessary intendment.
- (ii) *Usmanbhai's* case cannot be taken to be an authority for the exclusion of the entire jurisdiction of the High Court in cases under the Act.
- (iii) Exclusion of jurisdiction of the High Court is not to be readily inferred.
- (iv) In the absence of a procedure to the contrary the provisions of section 482 of the Code continue to apply to cases under the Act in view of section 4 of the Code.
- (v) Designated Courts constituted under the Act are Courts within the meaning of section 6 of the Code and they are governed by the provisions of the Code of Criminal Procedure except to the extent that a special provision has been made in the Act or certain provisions of the Code have been modified for purposes of the Act.
- (vi) The inherent powers of the High Court under section 482 of the Code are not conferred by any particular provision of statute but they are recognised and declared to be so.
- (vii) The High Court's powers under the Constitution include (a) power to enforce fundamental rights including Article 21; and (b) exercise superintendence over all Courts and Tribunals within its jurisdiction. The Designated Court established under the Act is one such Court.
- (viii) The Designated Court is a court of ordinary criminal justice. It may or may not be subordinate to the High Court, it is certainly inferior to the High Court.
- (ix) There is no conflict between inherent powers of the High Court and the provisions of the Act because the inherent powers are not used in violation of any express provision of law.

- (x) In the absence of any alternative and effective machinery for the redressal of genuine grievances it will result in great hardship to the persons involved in cases under the Act if it were held that the High Court had no jurisdiction at all to interfere in a case registered under the Act.

(4) Shri H. S. Bhullar, learned Deputy Advocate-General, Punjab, on the other hand, contended that the law laid down by the Supreme Court in *Usmanbhai's* case (supra) completely covers the question for consideration before this Bench and the authority is binding on this Court. He further contended that the scheme of the Act indicates that the intention of the Parliament was to exclude jurisdiction of the High Court altogether. He also relied on *Kumar Singh Chhajor's* case (supra) for the proposition that even jurisdiction of the High Court can be excluded by appropriate legislation.

(5) We have given our anxious consideration to the rival contentions.

(6) Before dealing with the contentions, it is necessary to notice the relevant provisions of the Act. The Terrorist and Disruptive Activities (Prevention) Act, 1985, was replaced by an Ordinance with the same title. In turn the Ordinance was replaced by the present Act under the same title as Act No. 28 of 1987. For the sake of convenience, we shall refer to the provisions of the 1987 Act.

(7) Section 2, relating to definitions, *inter alia*, defines "Code" to mean Code of Criminal Procedure, 1973 and "Designated Court" to mean a Court constituted under section 9. Clause (e) defines the expression "High Court". Clause (i) lays down that words and expressions used but not defined in the Act and defined in the Code shall have the meaning respectively assigned to them in the Code. Sections 3 and 4 define "terrorist acts" and "disruptive activities" respectively and provide punishment for the same. Section 5 lays down minimum punishment for the unauthorised possession of arms, ammunition, bombs and explosive substances in a notified area, whereas section 6 provides for enhanced punishment for offences under the Arms Act and the Explosives Act if the same are committed by any person with intent to aid any terrorist or disruptionist. Section 7 empowers the Central Government to confer powers of a police officer exercisable under the Code in the State. Section 9 empowers the Central as well as State Government to constitute one or more Designated Courts. Sub-section (4)

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lays down that Judge of the Designated Court shall be appointed by the appropriate Government, Central or State, with the concurrence of the Chief Justice of the High Court. Under sub-section (6) no person shall be qualified for appointment as a Judge unless immediately before his appointment he is holding the post of a Sessions Judge or an Additional Sessions Judge in any State. Section 11 deals with the jurisdiction of the Designated Courts and lays down that every offence punishable under the provisions of the Act or the Rules made thereunder shall be exclusively triable by the Designated Court. Section 12 empowers the Designated Court to try other offences with which the accused could be charged with at the same trial if the offence is connected with such other offence. Section 13 relates to appointment of Public Prosecutor. Section 14 deals with procedure and power of the Designated Courts. Sub-section (3) of section 14 lays down that the Designated Court shall have all the powers of a Court of Session. Section 19 lays down that an appeal from any judgment, sentence or order other than an interlocutory order of a Designated Court shall lie to the Supreme Court both on facts and on law. Sub-section (2) further lays down that except, as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Designated Court. Section 20 modifies certain provisions of the Code in their application to the offences triable by the Designated Court. These provisions include the definition of cognizable cases under sections 2, 21, 164, 167, 268, 366 to 371, 392 and 438 and special provisions regarding bail. It is noteworthy that section 482 of the Code has not been modified nor mentioned in the above provisions. Sub-section (2) of section 23 further lays down that Designated Court shall be deemed to be a court of ordinary criminal justice.

(8) It is not disputed that jurisdiction of the Court including the High Court can be taken away by express provision of law as well as by necessary implication. In fact, this is what has been done under section 19 of the Act wherein under sub-section (1) the power of appeal and revision has been vested in the Supreme Court and sub-section (2) bars any appeal or revision against any judgment, sentence or order to any other Court. By necessary implication, therefore, jurisdiction of the High Court has been barred with regard to appeal or revision from any judgment, sentence or order of a Designated Court. A survey of the provisions of the Act shows that there is no provision expressly ousting jurisdiction of the High Court in respect of the cases under the Act. The question remains

whether the jurisdiction of the High Court has been excluded by necessary implication. If the intention of the Parliament were to exclude the jurisdiction of the High Court altogether, it could be easily so provided in the Act. In fact, the exclusion of High Court's jurisdiction in the matter of appeal and revision under section 19 is indicative of the fact that whatever was intended to be excluded from the jurisdiction has been provided for and whatever was not required to be excluded has been kept intact. This is consistent with the settled proposition of law that exclusion of jurisdiction especially of the High Court which has a constitutional character, is not to be readily inferred.

(9) The matter can be examined from another angle. Section 4 of the Code deals with all offences in two categories. The first category is offence under the Indian Penal Code and the other is all other offences under any other law. Sub-section (1) of section 4 deals with the first category i.e. offences under the Indian Penal Code and lays down that the Code of Criminal Procedure would apply in relation to such offences regarding investigation, enquiry, trial and for being 'otherwise dealt with'. Sub-section (2) of section 4 deals with offences under "any other law" and provides that the provisions of the Code of Criminal Procedure would apply in all the above-noted matters i.e. investigation, enquiry, trial and for being otherwise dealt with subject to any provision to the contrary in such other law. The offences under consideration in the present case are those under the Act which is a law other than the Indian Penal Code. Sub-section (2) is, therefore, attracted. It follows that the Code of Criminal Procedure would apply in matters of investigation, enquiry, trial and other matters subject to any special provision in the Act. It has been seen above that special provisions have been made in the Code regarding trial by a Special Court called the Designated Court, the powers and procedure to be adopted by the Designated Court, the forum of appeal and revision and certain provisions, such as, period of remand etc. have been modified in their application to offences triable by the Designated Court. It has also been seen that section 482 of the Code has not been either expressly or impliedly touched by any provision of the Act. It follows that there is nothing in the Act to affect the application of section 482 of the Code in relation to offences triable by the Designated Court.

(10) The question can be examined from yet another angle. Section 482 of the Code runs as follows :—

"482. *Saving of Inherent Powers of High Court.*—Nothing in this Code shall be deemed to limit or affect the inherent

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powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of *any* Court or otherwise to secure the ends of justice."

(Emphasis added)

Section 6 of the Code, while laying down the various classes of Criminal Courts expressly makes a mention of (a) the High Court, and (b) Courts constituted under any law. The Designated Court is evidently a court constituted under the Terrorist and Disruptive Activities (Prevention) Act. It has been seen that it is presided over by a person who is a Sessions' Judge or an Additional Sessions Judge,—(vide Section 9(6)). The Designated Court enjoys all the powers of the Court of Session,—vide section 14(3) and it is a court of ordinary criminal justice,—vide section 23(2). Article 226 of the Constitution invests the High Court power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part-III and for any other purpose. The fundamental rights include the right to life or personal liberty. There is a catena of decisions of the Supreme Court laying down that the procedure envisaged by Article 21 of the Constitution has to be reasonable just and fair. (See *Bimal Kaur Khalsa v. Union of India* (3)). The conclusion, therefore, is that the Designated Court under the Act is covered under the wide amplitude of the jurisdiction of the High Court under the Constitution as well as under section 482 of the Code.

(11) There may conceivably be cases where the error, irregularity, or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indellible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may, quite properly, exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it confirmed what *ex facie* was a nullity for reasons aforementioned. We are supported in taking this view by the

(3) 1988 (1), P.L.R. 189.

observations of a Constitution Bench of the Supreme Court in *State of Uttar Pradesh v. Mohd. Nuh* (4).

(12) This brings us to a consideration of *Usmanbhai's* case (supra). The specific question as formulated in para 1 of the judgment in the said case was as to the jurisdiction and power of the High Court to grant bail under section 439 of the Code or by recourse to its inherent powers under section 482 to a person held in custody accused of an offence under sections 3 and 4 of the Act. Upholding the view of the Gujarat High Court, the Supreme Court held that the High Court had no jurisdiction to entertain an application for bail under section 439 or under section 482 of the Code in cases triable by the Designated Court under the Act. Shri Bhullar has relied on the following observations in the above case :—

(i) "7. Section 19 ousts the jurisdiction of the High Court altogether and reads :

... ..

 (vide para 7)

(ii) "...Under the scheme of the Act, there is complete exclusion of the jurisdiction of the High Court in any case involving the arrest of any person on an accusation of having committed an offence punishable under the Act or any rule made thereunder. There is contrariety between the provisions of the Act and those contained in the Code. Under the Code, the High Court is invested with various functions and duties in relation to any judgment or order passed by criminal court subordinate to it. Those powers may be briefly enumerated, namely, the jurisdiction and power to hear an appeal under Section 374 against any judgment or sentence passed by the Court of Session, the power to hear an appeal against an order of acquittal by a criminal Court including the Court of Session under Section 378, the power to hear a reference as to the validity of any Act, ordinance or regulation or any provision contained therein made by a criminal Court under Section 395, the confirmation of a death sentence on a reference by a Court of Session under Sections 366—371 and Section 392, the power to grant bail under Section

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439 subject to certain limitations, *the inherent power under Section 482 to make such orders as many be necessary or to prevent abuse of the process of the Court to otherwise secure the ends of justice.* Undoubtedly, the High Court has the jurisdiction and power to pass such orders as the ends of justice require in relation to proceedings before all criminal Courts subordinate to it.

 (vide para 16)

(iii) "The manifest intention of the legislature is to take away the jurisdiction and power of the High Court under the Code with respect to offences under the Act. No other construction is possible. The expression "High Court" is defined in Section 2(1)(e) but there are no functions and duties vested in the High Court.
 (vide para 18)

If the above observations are literally read without regard to the question before their Lordships of the Supreme Court, the contention of Shri Bhullar should be accepted. We are, however, of the view that these observations must be read in the context of the facts and circumstances of the case in which they appear. The principal question for consideration before their Lordships was whether the jurisdiction of the High Court to grant bail under section 439 or section 482 of the Code was ousted because of the provisions of the Act. The decision of the above question cannot be taken to mean that the larger question of section 482 of the Code being available or not was also considered and decided. These observations are undoubtedly entitled to great weight but, as pointed out by the Supreme Court in *H. H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur v. Union of India* (5), "an obiter cannot take the place of the ratio. Judges are not oracles". We may recall the caution administered by a Constitution Bench of the Supreme Court in *A.D.M. Jabalpur v. S. Shukla* (6), in the following words :—

"...Moreover, it must be remembered that when we are considering the observations of a high judicial authority like this Court, the greatest possible care must be taken to relate the observations of a judge to the precise issues

(5) A.I.R. S.C. 530.

(6) A.I.R. 1976 S.C. 1207.

before him and to confine such observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit. It is not possible for judges always to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards, the case in hand."

(*vide* para 546)

(13) We may also refer to the law laid down by the apex Court in *State of Orrisa v. Sudhansu Sekhar Misra and others* (7), as under :

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

(14) Again in *Sreenivasa General Traders and others v. State of Andhra Pradesh and others* (8), A. P. Sen, J., speaking for the Court, observed as under :—

"...A case is an authority only for what it actually decides and not for what may logically follow from it. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case in which such expressions are to be found."

(15) The concept of decision *sub silentio* was explained in *Municipal Corporation of Delhi v. Gurnam Kaur* (9), and it was

(7) A.I.R. 1968 S.C. 647.

(8) A.I.R. 1983 S.C. 1246.

(9) JT 1988 (4) S.C. 11.

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pointed out that the earlier judgment in Jamna Das' case, which was relied upon, did not furnish a binding precedent on the particular point under consideration as it was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachment from any public place and without any citation of authority.

(16) On a careful consideration and for the reasons discussed above, we are clearly of the view that the observations relied on by Mr. Bhullar do not conclude the matter.

(17) The decision of the Privy Council in *Kumar Singh Chhajor's* case (supra) is easily distinguishable. The jurisdiction of the High Court was held to have been completely ousted under Section 26 of the Special Criminal Courts Ordinance, 1942. Section 6 was in the following terms :

“Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall, save as provided in this Ordinance, be no appeal from any order or sentence of a Court constituted under this Ordinance and, save as aforesaid, no Court shall have authority to revise such order or sentence, or to transfer any such case from any such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings of any such Court.”
(Emphasis added)

As stated above, the Court in *Kumar Singh Chhajor's* case (supra) was construing a section of the Ordinance which has the force of statutory law. Judgment of the Supreme Court, on the other hand, cannot be read as a statute (See *Sreenivasa General Traders' case*) (supra). Moreover, the language used in Section 26, quoted above, expressly ousted the jurisdiction of all Courts except to the extent mentioned in the Ordinance, which is not the case in the present Act. It was, therefore, held that no Court could claim inherent jurisdiction to exercise powers expressly taken away by legislation.

(18) Reference to the provisions of the Act shows that except for a forum for appeal and revision no machinery has been provided, assuming that the jurisdiction of the High Court stands ousted. In

various situations, it will result in great hardship to the persons being proceeded against under the Act. One such example may be given to illustrate the point. Only the High Court has the jurisdiction to expunge adverse remarks in exercise of its powers under section 482 (See *State of Uttar Pradesh v. Mohd. Naim*, AIR 1964 S.C. 703). If a person felt aggrieved on this account, he will have not effective remedy if it were held that the High Court's jurisdiction under Section 482 stands ousted in respect of cases triable by the Designated Court.

(19) For the reasons hereinbefore discussed, we are clearly of the view that inherent jurisdiction of the High Court under Section 482 of the Code in respect of offences under the Terrorist and Disruptive Activities (Prevention) Act 1985 is not ousted. We answer the question referred to the Full Bench accordingly. The papers will now go back to the learned Single Judge for disposal of the matter according to law.

P.C.G.

Before : G. R. Majithia, J.

TELU RAM,—Appellant
versus

HARYANA AGRICULTURAL UNIVERSITY, HISSAR,
—Respondents.

Regular Second Appeal No. 2066 of 1978.

19th December, 1990.

Haryana Agricultural University Act, 1970—S. 31(q)—Statutes under Haryana Agricultural University Act, 1961—Cl. 20(9)—Appellant proceeding on leave without pay—Application sent for Medical leave—Overstay of leave—Post declared vacant—Neither notice served nor opportunity of hearing afforded to appellant—Such action—Whether amounts to violation of the principles of natural justice—Overstay of leave for more than 1½ year—Appellant not guilty of 'Misconduct' though such action is not appreciated—Appellant reinstated with fifty per cent back wages.

Held, that before any action is taken under sub-clause (9) of Clause 20 of the Statutes, the employee who has overstayed his leave and whose post has been declared vacant must be served with