Before D. V. Sehgal, J.

KULDIP SINGH,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT, PATIALA and others,—*Respondents.*

Civil Writ Petition No. 383 *of* 1986

October 7, 1986.

Constitution of India, 1950—*Articles* 14 *and* 226—*Industrial Disputes Act* (*XIV of* 1947)—*Sections* 2(00), 11*A and* 25 *F—Punjab State Supplies & Marketing Co-operative Services* (*Common Cadre*) *Rules*, 1957—*Rule* 2.10 proviso (*a*)—*Termination of service of employees on account of misconduct—Rule* 2.10 *enabling employer to terminate service without notice or pay in lieu—Rule* 2.10—*Whether arbitrary and violative of Article* 14 *of the Constitution—Termination of service by way of disciplinary action—Whether can be treated as retrenchment—Compliance with section* 25 *F of the Act—Whether necessary—Employer—Whether entitled to justify dismissal either before domestic enquiry or Labour Court—Right of employer to prove misconduct for the first time before the Labour Court—Whether taken away by the proviso to Section* 11-*A—Order of termination passed by employer held void—Termination of services found justified before Labour Court—Dismissed employee—Whether entitled to back wages till date of award of Labour Court.*

Held, that proviso (a) to Rule 2.10 of the Punjab State Supply and Marketing Co-operative Services (Common Cadre) Rules, 1967 vests an unguided use of power in the employer to remove an employee from service for misconduct. There is no requirement in the aforesaid rules that reasons are required to be recorded to the effect that if an enquiry into the misconduct of the employee was held the same would have been counter-productive and had to be dispensed with. This provision arms the appointing authority with an arbitrary power to resort to removal of an employee without notice by not choosing to take appropriate disciplinary proceedings against him as laid down in rules 2.13 and 2.14 of the Rules. Proviso (a) to rule 2.10 of the Rules is, therefore, arbitrary and as such is *ultra vires* Article 14 of the Constitution of India, 1950. (Para 11).

Held, reference to proviso (a) to Rule 10 of the Rules in the order of termination makes it abundantly clear that the employee had been removed from service on account of misconduct. The

mere fact that the aforesaid proviso in the Common Cadre Rules is *ultra vires* the Constitution could not change the character of termination to one of retrenchment as contemplated by Section 2(oo) of the Industrial Disputes Act, 1947. Where termination is by way of punishment inflicted by way of disciplinary action it would not constitute "retrenchment", and as such compliance with the provisions of section 25-F of the Act is not necessary.

(Para 11).

Held, that even if no enquiry had been held by the employer or if the enquiry held by the employer is found to be defective the Labour Court in order to satisfy itself about the legality and validity of the order of termination of service has to give an opportunity to the employer and the employee to adduce evidence for the first time justifying the action. Once misconduct is proved either in the enquiry conducted by the employer or by the evidence placed before the Labour Court, the punishment imposed cannot be interfered with by the Labour Court except in cases where the punishment is harsh and oppressive. As such the right of the employer to adduce evidence justifying the action taken against the employee for the first time before the Labour Court is not taken away by the proviso to Section 11-A of the Act.

(Para 12).

Held, that since the order terminating the service of the employee has been passed without holding an enquiry as provided by Rule 2.14 of the Rules and by taking resort to proviso (a) to Rule 2.10 which is *ultra vires* the Constitution the said order is non-existent in the eye of law. As such, the employee is entitled to back wages till the date of publication of the award of the Labour Court.

(Paras 15 and 16)

Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble High Court be pleased to :—

(i) *summon the complete record of the Presiding Officer, Labour Court, Patiala and after perusal thereof ;*

(ii) *issue a suitable writ, order or Direction quashing the impugned award of the Labour Court (Annexure P/13) published in the Punjab Government Gazette Notification dated August 16, 1985 and order of termination dated 2nd January, 1980 passed by the Management as contained in Annexures P/2 ;*

(iii) *declare the petitioner to be in continuous service in the Marked and entitled to all consequential reliefs including full back wages and other benefits attached to the post which the petitioner was occupying at the time of termination of his services ;*

(iv) *strike down Rule* 2.10 *of the Common Cadre Rules,* 1967 *being arbitrary, unconstitutional, against the statutory rules and violative of Articles* 14 *and* 16 *of the Constitution of India and* mala fide *aimed at eliminating the members of the Trade Union having no nexus with the object to be achieved and against the provisions of Industrial Disputes Act,* 1947;

(v) *Direct respondents to pay salary from* 2nd *January,* 1980 *to* 18th *March,* 1985 *when the impugned award was given, in case the petitioner is found not entitled to reinstatement with continuity of service and payment of full back wages ;*

(vi) *grant any other relief to which this Hon'ble Court may deem fit in the circumstances of this case and also allow the writ petition with costs.*

V. P. Sharma, Advocate, *for the Petitioner.*

N. K. Sodhi, Advocate with R. N. Raina, Advocate, *for Respondent No.* 3.

JUDGMENT

D. V. Sehgal, J.

(1) The petitioner was appointed as Field Officer in the employment of the Punjab State Co-operative Supply and Marketing Federation Limited, respondent No. 3 (for short 'the MARKFED') in September 1967. He was on probation for a period of one year which he successfully completed. He claims to be a permanent employee of the MARKFED governed by the Punjab State Supply and Marketing Co-operatives Services (Common Cadre) Rules, 1967 (hereinafter called 'the Common Cadre Rules'). He was elected President of the MARKFED Employees, Union and in that capacity he espoused the causes of the employees of respondent No. 3 and also claims to have exposed serious lapses and financial defalcations on the part of his higher authorities. On 21st December, 1979 under

the directions of the MARKFED Employees, Co-ordination Committee, he, in his capacity as the President of the Union, served a notice Annexure P. 1 on the then Managing Director of the MARKFED bringing to his notice the illegal appointments of the Law Officer, the Training Officer and some others. Certain demands were also made therein and it was stated that in case the same were not met with the members of the Union would take resort to mass casual leave, sit in strike general strike, demonstrations, hunger strike etc. He contends that instead of accepting the demands of the employees contained in Annexure P. 1, his services as Field Officer were hurriedly terminated on 2nd January, 1980 by taking resort to proviso (a) to rule 2.10 of the Common Cadre Rules,—*vide* order Annexure P. 2, which was delivered to him through a special messenger deputed from Chandigarh to Patiala where he was posted.

(2) Aggrieved against the order Annexure P. 2, he filed an appeal dated 8th January, 1980 Annexure P. 3 before the Registrar Co-operative Societies, respondent No. 2, who at that time was functioning as Administrator of the MARKFED because it had no Board of Directors at the relevant time. Respondent No. 2 refused to stay operation of the order of termination Annexure P. 2. The said appeal was in fact, never heard by respondent No. 2. It was instead transferred to the Board of Directors, after its constitution, for its decision. Even the Board of Directors did not hear the appeal. He therefore, filed a petition dated 4th March, 1982 under rule 2.17(e) read with rule 1.9 of the Common Cadre Rules before respondent No 2 who simply directed that the Board of Directors should decide the petitioner's appeal within one month. In spite of the fact that the matter was brought on the agenda Annexure P. 4 for a meeting before the Board of Directors for consideration, no final decision was taken.

(3) The petitioner thereon approached the Labour Commissioner, Punjab, for reference of the dispute for adjudication under section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act'). Thereupon, the following dispute was referred to the Labour Court —

> "Whether termination of services of Shri Kuldip Singh workman is jusified and in order? If not, to what relief/exact amount of compensation is he entitled?"

(4) He filed his claim application Annexure P. 6 before the Presiding Officer, Labour Court, Patiala, respondent No. 1 Respondent

No. 3 filed its written statement Annexure P. 7 thereto. Both the parties produced their evidence. Respondent No. 1 made his award dated 18th March, 1985 Annexure P. 13 holding that the order terminating the services of the petitioner was justified and in order. Consequently, his claim was rejected. The award Annexure P. 13 has been impugned through the present writ petition. A prayer has been made that the same should be quashed and the order of termination of the services of the petitioner Annexure P. 2 being void he should be held to be in continuous service of the MARKFED and he should be declared entitled to all the consequential reliefs including full backwages and other benefits attached to the post he was holding at the time of termination of his services. A prayer has also been made that the relevant part of the rule 2.10 of the Common Cadre Rules which has been impugned being arbitrary and unconstitutional should be held *ultra vires*. A prayer has also been made that respondent No. 3 should be directed to pay salary to the petitioner from 2nd January, 1980 to 18th March, 1985 in case it is found that the petitioner is not entitled to reinstatement with continuity of service and full backwages.

(5) The petition has been opposed by respondent No. 3. Written statement has been filed on its behalf. The impugned order Annexure P. 2 has been justified. It has been contended that the petitioner was guilty of misconduct and as such he was removed from service by taking resort to proviso (a) to rule 2.10 of the Common Cadre Rules. It has been stated that when the matter came up for adjudication before respondent No. 1, the MARKFED established that the removal of the petitioner from service was justified. The victimisation and unfair labour practices alluded to by the petitioner have been denied. It has been further contended that the MARKFED is a co-operative organisation. It is not 'an authority' and thus 'the State' within the meaning of Article 12 of the Constitution and, therefore, not amenable to the writ jurisdiction of this Court. Proviso (a) to rule 2.10 of the Common Cadre Rules has been defended and it has been maintained that it was rightly made applicable to the case of the petitioner. It has been further submitted that the award has been made by respondent No. 1 after fully appreciating the evidence adduced before him. No case has been made out for interference with the same in the present writ petition.

(6) I have heard the learned counsel for the parties at sufficient length. The question "whether the MARKFED is 'an authority' and thus 'the State' within the meaning of Article 12 of the Constitution".

should not detain me as I have answered the same in the affirmative in my judgment *K. N. Chopra* v. *Punjab State* (1), I, therefore, hold that respondent No. 3 is amenable to the writ jurisdiction of this Court.

(7) It is also worth mentioning here that a Full Bench of this Court in *Bhupinder Singh and others* v. *The State of Punjab and others,* (1a), has held that the Common Cadre Rules, which govern the services of the petitioner as an employee of the MARKFED, are statutory in character and any person affected adversely by their enforcement can invoke the jurisdiction of this Court under Article 226 of the Constitution.

(8) The learned counsel for the petitioner while challenging the vires of proviso (a) to rule 2.10 *ibid* has highlighted the fact that rule 2.13 provides for discipline and appeal. It lays down that notwithstanding anything contained in any other regulation and without prejudice to such action to which an employee becomes liable under any other law or regulation for the time being in force any and all of the penalties mentioned therein may be imposed for good and sufficient reason on any member of the service. The punishments so mentioned include dismissal from service and compulsory retirement. Rule 2.14 lays down that no penalty shall be imposed on any employee unless the charge or charges on which it is proposed to take disciplinary action against him have been communicated to him in writing and he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. The authority competent to impose the penalty may, if circumstances permit, hold an enquiry into the charge or charges or cause such an enquiry to be held by an officer superior to the person against whom the action is proposed to be taken for the purpose of ascertaining the truth or otherwise of the charge or charges. If it is decided to hold an enquiry, the employee concerned shall be permitted to cite witnesses on his behalf and examine the relevant documents, but shall not be permitted to engage a lawyer at the enquiry. In view of this elaborate procedure for disciplinary action, thus proceeds the argument, the unbriddled and unguided power vested in the competent authority by proviso (a) to rule 2.10 to remove an employee from service on misconduct established on record without his being

(1) CW 3969/84 decided on 26th August, 1986.

(1a) I.L.R. (1986)1 Punjab and Haryana 164.

entitled to a notice or pay in lieu thereof is arbitrary. It is contended that this power can be used at the whim of the authorities disregarding the right to equality before law. This provision is, therefore, stated to be *ultra vires* Article 14 of the Constitution. I have given thoughful consideration to this submission and find it to be quite valid.

(9) The matter is fully covered by the ratio of the judgment in *Workmen of Hindustan Steel Limited and another* v. *Hindustan Steel Limited and others* (2). It has been held that when the decision of the employer to dispense with the enquiry is questioned, the employer must be in a position to satisfy the Court that holding of the enquiry will be either counter-productive or may cause such irreparable and irreversible damage which in the facts and circumstances of the case need not be suffered. The minimum requirement cannot and should not be dispensed with to control wide discretionary power and to guard against the drastic power to inflict such a heavy punishment as denial of livelihood and casting a stigma without giving the slightest opportunity to the employee to controvert the allegation and even without letting him know what is his misconduct. Referring to the situations contemplated by proviso to Article 311(2) of the Constitution, it has been held that where a power to dispense with the enquiry is conferred on an authority to impose penalty of dismissal or removal or reduction in rank, before it can dispense with the enquiry, it must be satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such an enquiry. Power to dispense with enquiry is conferred for a purpose and to effectuate the purpose power can be exercised. But power is hedged in with a condition of setting down reasons in writing why power is exercised. Obviously, therefore, the reasons which would permit exercise of power must be such as would clearly spell out that the enquiry if held would be counter-productive. The duty to specify by reasons the satisfaction for holding that the enquiry was not reasonably practicable cannot be dispensed with. The reasons must be germane to the issue and would be subject to a limited judicial review.

(10) As rightly pointed out by the learned counsel for the petitioner, the alleged misconduct on the basis of which the petitioner was removed from service,—*vide* order Annexure P. 2 relates to the month of September, 1977, while he has been removed from service by taking resort to proviso (a) to rule 2.10 on 2nd January,

(2) A.I.R. 1985 S.C. 251.

1980. This speaks volumes of the unguided use of the power vested by the impugned provision in the Common Cadre Rules. No reason has been put forward nor is there any requirement in proviso (a) to rule 2.10 that reasons are required to be recorded to the effect that if an enquiry into the misconduct of the employee was held the same would have been counter productive and had to be dispensed with. This provision arms the appointing authority with an arbitrary power to resort to removal of an employee without notice by not choosing to take appropriate disciplinary proceedings against him as laid down in rules 2.13 and 2.14 *ibid.* I, therefore, held that proviso (a) to rule 2.10 of the Common Cadre Rules is violative of Article 14 and is, therefore, *ultra vires* the Constitution.

(11) The next question that comes up for consideration is that when the order Annexure P. 2 removing the petitioner from service had been passed without affording reasonable opportunity to him as provided under rule 2.14 *ibid,* could respondent No. 3 justify the same by adducing evidence before respondent No. 1 so as to prove misconduct on the part of the petitioner. The learned counsel for the petitioner has contended that the order Annexure P. 2 is a simple order of termination from service. Once proviso (a) to rule 2.10 of the Common Cadre Rules is held *ultra vires* the Constitution, reference to the same in the impugned order stands obliterated. The result is that the impugned order of termination would come to fall within the scope of 'retrenchment' as contemplated by section 2(oo) of the Act. I am not one with this argument. Reference to proviso (a) to rule 2.10 of the Common Cadre Rules in the impugned order makes it abundantly clear that the petitioner has been removed from service on account of misconduct. The mere fact that the aforesaid provision in the Common Cadre Rules is *ultra vires* the Constitution would not change the character of the impugned order. The position of law has been well explained in *Mohari Lal* v. *The Management of M/s. Bharat Electronics Limited* (3). It has been held that termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in section 2(oo) of the Act itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman

(3) A.I.R. 1981 S.C. 1253.

concerned contains a stipulation in that behalf, and termination of service of a workman on the ground of ill-health. So, termination of service of a workman by way of disciplinary action, as has been done in the present case, is excepted. That being so, the contention of the learned counsel for the petitioner that for reasons of non-compliance with the provisions of section 25-F of the Act the impugned order is *non est* has to be repelled.

(12) It was then contended by the learned counsel for the petitioner that the impugned order Annexure P. 2 passed on the basis of alleged misconduct without affording reasonable opportunity to him as provided by rule 3.14 *ibid* is void and that respondent No. 1 could not resuscitate the same by allowing the MARKFED to establish the misconduct by leading evidence before him. His contention, therefore, is that the award Annexure P. 13 holding that the order of termination of services of the petitioner is justified and in order is without jurisdiction. The law on this aspect of the case is by now well settled and as such this contention is without merit. In *The Workmen of M/s. Firestone Tyre and Rubber Company of India Private Limited* v. *The Management and others* (4), it has been held that the mere fact that no enquiry or defective enquiry has been held by the employer does not by itself render the dismissal of the workman illegal. The right of the employer to adduce evidence justifying his action for the first time in such a case is not taken away by the proviso to section 11-A of the Act. Legal position as existing prior to coming into force of section 11-A of the Act and changes effected thereby were discussed and explained elaborately. This position of law was re-affirmed in *The East India Hotels* v. *Their Workmen and others* (5). It was observed that even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer and employee to adduce evidence for the first time justifying his action. Once misconduct is proved either in the enquiry conducted by the employer or by the evidence placed before the Tribunal, the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive. It is to be noted that in its written statement Annexure P. 7 filed by the MARKFED before respondent No. 1, it was categorically stated that the services of the petitioner were terminated

(4) A.I.R. 1973 S.C. 1227.

(5) A.I.R. 1974 S.C. 696.

on account of acts of misconduct and that it shall prove all the facts constituting misconduct before the Labour Court. Therefore, no exception can be taken to the procedure adopted by respondent No. 1 in allowing opportunity to the MARKFED to establish misconduct on the part of the petitioner particularly when he was also provided with the right to defend himself.

(13) The learned counsel for the petitioner then proceeded to assail the award Annexure P. 13 on the ground that respondent No. 1 did not fully appreciate the evidence on the record and had wrongly held that the petitioner had not been able to prove mala fides on the part of respondent No. 3 and his victimisation at the hands of its authorities. In his support he cited *Om Parkash Sharma and another* v. *The Presiding Officer Industrial Tribunal and another* (6). Before this submission is considered, it is necessary to notice that this Court while adjudicating upon the validity of an award of a Labour Court is not sitting as a Court of appeal. It is not within its jurisdiction to appreciate the evidence adduced before the Labour Court and to find out whether or not the findings of fact recorded in the award are based on sufficient and adequate evidence. Reference here may be made to *Syed Yakoob* v. K. S. *Radhakrishnan and others* (7), wherein it was observed thus—

> "The jurisdiction of High Court to issue a writ of *certiorari* is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of *certiorari* can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be

(6) 1983 Lab. I.C. 173.
(7) A.I.R. 1964 S.C. 477.

regarded as an error of law which can be corrected by a writ of *certiorari.*

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of *certiorari* on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court."

(14) In his award, respondent No. 1 by reference to the evidence adduced before him has negatived the assertion of the petitioner that he was victimised or that disciplinary action taken against him was mala fide. There is no reason to disturb this finding.

(15) The last submission of the learned counsel for the petitioner is that since the order of termination of his service Annexure P. 2 had been passed without holding an enquiry as laid down by rule 2.14 of the Common Cadre Rules and by taking resort to proviso (a) to rule 2.10 which is ultra vires the Constitution, the said order was non-existent in the eyes of law and it is only through the award Annexure P. 13 published on 16th August, 1985, that his termination from service has been held to be justified after the MARKFED and the petitioner adduced their evidence before respondent No. 1. He, therefore, submits that the petitioner is entitled to the wages last drawn by him for the period 2nd January 1980 to 16th August, 1985. I find that this submission is well merited. The position of law in this regard has been elaborately discussed in *Gujarat Steel Tubes Ltd., etc.,* v. *Gujarat Steel Tubes Mazdoor Sabha and others* (8). It has been held that the award of the Labour Court wherein the termination of services of the workman is held to be justified for the first time cannot be related back to the date of termination orders, when such an order has been passed by way of disciplinary action either without holding an enquiry or on the basis of defective enquiry proceedings by the employer. It has been held that a void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shell of the

(8) A.I.R. 1980 S.C. 1896.

Management's order, pre-dating of the nativity does not arise. Where the Management discharges a workman by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation-back doctrine cannot be invoked. The jurisprudential difference between a void order, which by a subsequent judicial resuscitation comes into being *de novo*, and an order which may suffer from some defects but is not stillborn or void and all that is needed in the law to make it good is a subsequent approval by a Tribunal, which is granted, cannot be obfuscated.

(16) I have, therefore, no hesitation to hold that lawful termination of the petitioner from service takes effect on 16th August, 1985 when the award Annexure P. 13 was published and he is thus entitled to backwages from the date of the termination order passed by the MARKFED Annexre P. 2, i.e., 2nd January, 1980, till 16th August, 1985.

(17) At this stage, the learned counsel for respondent No. 3 has vehemently contended that the question whether or nor the petitioner was entitled to backwages did not form the subject-matter of an issue before respondent No. 1 and as such the MARKFED had no opportunity to adduce evidence to the effect that the petitioner was otherwise gainfully employed during the period intervening between 2nd January, 1980 to 16th August, 1985. He, thus, contends that the MARKFED would be burdened with financial liability of backwages for the period in question without its having an opportunity to prove that the petitioner is not entitled to the same. I am not at all persuaded to agree with this submission. It is to be noted that in his statement Annexure P. 12 before the Labour Court the petitioner had categorically stated that he was drawing Rs. 958.80 p.m., as his wages while employed as Field Inspector with the MARKFED. He further stated that after termination of his services he had searched for work but could not find any. When cross-examined by the representative of the MARKFED on this Employment Exchange. He owns 10 Bighas of cultivable land but that is in the name of his father. He has no income from the said land. He has no property and has no income therefrom. He is married having three children who are all school-going. This statement leaves no scope for doubt that the petitioiner had positively put forward his case that he was not employed during the relevant

period. He had been duly cross-examined on this aspect. It was, thus, for the MARKFED to have led evidence to rebut this assertion and to show that the petitnoner was employed during the relevant period but it was not so done. A similar contention raised before the Supreme Court in *Shambu Nath Goyal* v. *Bank of Baroda and others* (9), was repelled. It was observed that the blame for not framing an issue on the question whether or not the workman was gainfully employed during the intervening period cannot be laid on the Tribunal alone. It was equally the duty of the Management to have got that issue framed by the Tribunal and adduce the necessary evidence unless the object was to make up that question at some later stage to the disadvantage of the workman as in fact it has been done. There being no material on the record to show that the workman was gainfully employed anywhere, the workman was not expected to prove the negative. At the cost of repetition, it may be noted in the present case that the workman did categorically state that he was not gainfully employed and he had been duly cross-examined on this aspect by the representative of the MARKFED. The contention of the learned counsel for the MARKFED, therefore, is without any substance.

The learned counsel for the parties debated before me the question whether the impugned order Annexure P. 2 had been passed by an authority competent to do so under the Common Cadre Rules. Affidavits in support of the rival contentions of the parties were also placed on the record on conclusion of the arguments by them. It is, however, not necessary to go into this question as I have already held above that proviso (a) to rule 2.10, taking resort to which the impugned order had been passed, is *ultra vires* the Constitution and the said order is even otherwise illegal for denial of due opportunity to the petitioner before terminating his services by way of disciplinary action.

(18) Consequently, I partly allow this petition. I hold that proviso (a) to rule 2.10 of the Common Cadre Rules is *ultra vires* the Constitution. Order Annexure P. 2 terminating the services of the petitioner by way of disciplinary action under the said provision in the rules is also illegal and *ultra vires*. However, I uphold the award Annexure P. 13 made by respondent No. 1 to the effect that termination of the services of the petitioner is justified and in order. I, however, quash the finding under issue No. 3 in the

(9) 1984 (1) S.L.R. 212.

award wherein it is held that the petitioner is not entitled to any relief. I hold that he is entitled to payment of backwages with effect from 2nd January, 1980, i.e., the date of the termination order Annexure P. 2, to 16th August, 1985, when the award Annexure P. 13 was published and I direct respondent No. 3 to make payment of these wages to the petitioner within three months from today. The petitioner shall also be entitled to the costs of this writ petition which, in view of its partial success, are assessed at Rs. 500 only.

H.S.B.

Before D. S. Tewatia, J.

HARCHAND SINGH and others,—*Appellants.*

versus

MOHINDER KAUR and others,—*Respondents.*

Regular Second Appeal No. 953 *of* 1977.

September 17, 1986.

Evidence Act (V of 1872)—Section 57—Registration Act (XVI of 1908)—Section 49—Rattigan's Digest on Customary Law—Paragraph 22—Male agriculturist dying leaving minor daughters and his mother—Mother claiming succession to the property of the deceased under Customary Law in preference to the claim of her grand daughters by virtue of paragraph 22 of Rattigan's Digest—Custom aforesaid—Whether stands recognised by the Courts of law—Principles for recognition of a custom—Stated—Mother—Whether entitled to succeed the property in preference to the daughters of the deceased—Statement made by the mother before the Guardian Court abandoning her claim to the property of the deceased son by recognising the right of the daughters of the deceased—Mother aforesaid on this statement appointed guardian of the daughters of the deceased—Statement aforesaid—Whether admissible in evidence—Mother—Whether estopped from claiming the suit property as her own.

Held, that the ordinary rule is that all customs general or otherwise have to be proved like any other fact. However, nothing need be proved of which Courts can take judicial notice. Therefore, if there is a custom of which Court can take judicial notice