

A.F.R.

Court No. - 40

Case :- WRIT - A No. - 6334 of 2022

Petitioner :- Smt. Poonam Rani

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Chandra Jeet Yeadav

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vikas Budhwar,J.

(Per: Hon'ble Vikas Budhwar, J.)

1. Heard Sri Chandra Jeet Yadav, learned counsel for the petitioner and Sri Nand Lal Mourya, learned Standing Counsel, who appears for the respondents.

FACTS

2. Factual matrix of the case as worded in the writ petition are that the petitioner Smt. Poonam Rani claims herself to be the the wife of Sri Yogesh Kumar, who was posted as Junior Engineer in Paschimanchal Vidyut Vitran Nigam Limited, Victoria Park, Meerut. Records reveal that certain allegations were levelled against his performance while discharging official duty which occasioned laying of a trap pursuant whereto, he was found indulged in corruption coupled with misconduct pursuant whereto a Criminal Case No.11 of 2018 was registered on 19.1.2018 purported to be under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (In short Act of 1988) Police Station Mainather, District Moradabad and thereafter a first information report was also lodged and proceedings for prosecution was also drawn and he was placed under suspension on 22.1.2018. Sanction was also proceeded to be obtained under Section 17 of the Act of 1988 which was accorded on 15.2.2018. Simultaneously, a charge sheet was also issued to the petitioner by the Disciplinary Authority on 6.8.2019 and thereafter one Sri Pramod Gogneya was appointed as the Enquiry Officer and regular departmental enquiry was conducted by the Enquiry Officer, who in turn tendered its enquiry report on 6.1.2021 holding the husband of the petitioner

guilty of the two charges which was sought to be levelled upon it. Ultimately, on 7.7.2021 an order was passed whereby the husband of the petitioner was dismissed from services.

3. Sri Yadav, learned counsel for the petitioner has made a statement at bar that the order dated 7.7.2021 dismissing the husband of the petitioner has been further carried in a departmental appeal before the appellate authority which is stated to be pending.

4. The petitioner herein claiming herself to be the wife of Yogesh Kumar, who had been dismissed by virtue of order dated 7.2.2021 has approached this Court while filing the present petition seeking following reliefs:-

(I) Interpret the JUSTICE, Social, Economic and Political provided in the preamble of the Constitution of India, Article 309 and 311 of the Constitution of India, in the contest of the involved substantial question of law as to interpretation of this Constitution framed as follows:

(a) Does word "Dismissal" used under Article 311 of the Constitution of India includes impression or sprit or means of "Dismissal from the Service which disqualify from future employment" or penalty provided under Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rule, 1999 stands repugnant/ inconsistent to the impression or sprit or means to the word "Dismissal" used under Article 311 of the Constitution of India?

(b) Does in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, its permissible or within jurisdiction to amend/modify/alter/identify or clarify the word "Dismissal" used under Article 311 of the Constitution of India as "Dismissal from the service which disqualify from future employment" and "Dismissal from service which does not disqualify from employment" as designed amended/modified/altered/ identified and clarified vide Rule 3-B-(iii) and (iv) of the Uttar Pradesh Government Servant

(Discipline and Appeal), Rules, future and 1999 or not?

(c) Does proviso of Article 309 of the Constitution of India creates jurisdiction/authority to design "Rules" which may regulate the future of the persons appointed to public services and posts in connection with affairs of the union or of any State, after dismissal of service or penalty provided under Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999 or Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999 is repugnant/ inconsistent to the earlier/basic part of Article 309 of the Constitution of India specified as "Subject to the provisions of this Constitution Acts of the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with affairs of Union or of any State?"

(d) Does Rule 3-B-(iv) framed under the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in suppression of the Civil Service (Classification, Control and Appeal) Rules, 1930 and Punishment and Appeal Rules for Subordinate Service Uttar Pradesh, 1932 is in accordance with jurisdiction/authority/ limits prescribed as "Subject to the provisions of this Constitution, Acts of the appropriate legislature may regulate the condition of service of persons appointed to the public services and posts in connection with affairs of the Union or of any the State" under Article 309 of the Constitution of India?

(e) Does jurisdiction/authority of the proviso of Article 309 of the Constitution of India framed/designed "Rules" like "Dismissal from service which disqualify from the service from future employment" for the purpose of regulate the recruitment and conditions of services of persons appointed to the public services and the posts in connection with the affairs of the

Union or of any State, which substantially and remotely terminates the mandatory duty/ responsibility of a Government Servant or Public Servant coupled with Section 125 of the Code of Criminal Procedure, 1973 or Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999 is repugnant/inconsistent to the preamble of the Constitution (JUSTICE, Social, economic and political) read with Article 13, 14 and 21 of the Constitution of India along with Article 5, 23(i) and 25(ii) of the Universal Declaration of Human Rights read with Section 125 of the Code of Criminal Procedure, 1973 guaranteed to the family members/dependents of a Government Servant?

(f) Does designing of penalty and empowerment of the appointing authority/ disciplinary authority with "Dismissal from the service which disqualify from the future employment" in exercise of the powers conferred by the proviso to Article 309 of the Constitution, substantially makes appointing authority/disciplinary authority as supreme controller of life and dignity of a Government servant and his family members/dependents, even after dismissal from service and consequence whereof a Government servant becomes life time slaves of appointing authority/disciplinary authority after dismissal of services?

(g) Does after making "Rules" in exercise of power conferred by the proviso to Article 309 of the Constitution, the necessity of making "Acts" of/by appropriate legislation may regulate the recruitment and conditions of service of persons appointed to the public services and posts in connection with the affairs of the Union or of any State comes to an end or continuance of such Rules is in conflict to the Article 85 to Article 111 and Article 174 to Article 200 of the Constitution of India or not?

(II) Issue an order or direction in the nature of "Public Law Litigation" to restrain appointing authorities/disciplinary

PALIEKAMARRAORTAROAK authorities or other competent authorities from imposing and implementing penalty provided under 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999 upon any Government servant.

(III) Issue an order or direction in the nature of "Public Law Litigation" commanding to appointing or other competent authorities/disciplinary authorities, to protect the rights guaranteed to the family members/ dependents of the Government servants through preamble of the Constitution, Article 14 and 21 of the Constitution of India, Article 5, 23(i) and 25(ii) of the Universal Declaration of Human Rights and Section 125 of the Code of Criminal Procedure, 1973 from despotism of Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999.

(IV) Issue an order or direction in the nature of "Public Law terminate Litigation" to the relationship of supreme controller of life and dignity of a Government servant and slaves arising out from imposition of penalty provided under Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999 by the appointing authorities/ disciplinary authorities or other competent authorities and maintain the relationship of employer and employee.

(V) Issue an appropriate order or direction to declare the penalty provided under Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999 as void ab initio/ultra vires to preamble of the Constitution, Article 13, 14, 21 and 311 of the Constitution of India.

(VI) Issue any suitable order or direction which this Hon'ble Court may deem fit and proper in the fact and circumstances of the instant case.

(VII) Award cost of the petition in favour of the petitioner.

5. Sri Yadav, learned counsel for the petitioner has made manifold

submissions namely:-

(a) The provisions contained under Rule 3-B-(iv) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (In short of the Rules, 1999) in so far as it provides that in case of dismissal from service then it would disqualify from further employment is ultra-virus of Article 309 read with 311 of the Constitution of India.

(b) Article 311 of the Constitution of India nowhere envisages any differential treatment or differentiation with respect to disqualification from future employment in the case of dismissal vis-a-vis penalty of removal where there is no disqualification for future employment and thus Rule 3-B-(iv) of the Rules, 1999 is ultra-virus.

(c) The petitioner herein though is the wife of a dismissed employee (Yogesh Kumar) but in view of the doctrine so enunciated by the Hon'ble Apex Court in the case of **Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar and others (2008) 9 SCC 54**, the writ petition so instituted by the petitioner herein is maintainable as the petitioner has locus standi to institute the present petition.

6. Elaborating the first submission, learned counsel for the petitioner has argued that once Article 311 of the Constitution of India itself provides for imposition of punishment of dismissal or removal or reduction in rank without containing any fetters with respect to any disqualification so attached thereto, then 1999 Rules which have been enacted under the proviso to Article 309 of the Constitution of India cannot provide for any disqualification in case an officer or employee is visited with the punishment of dismissal while putting a condition disqualifying him or her from future employment.

7. Sri Yadav, in order to buttress his submission with respect to locus standi has invited the attention of the Court towards the judgment in the case of **Raju Ramsingh Vasave (Supra)** while referring to paragraph 45 of the judgment so as to further contend that the present case falls within the domain of Public Law Litigation (PLL) as the same may not be a subject matter of public interest litigation and as an issue relatable to public importance is being raised then this Court can suo motu exercise its jurisdiction.

8. Sri Mourya, learned Standing Counsel has refuted the submissions of Sri Yadav, who appears for the petitioner while arguing that the present writ petition is nothing but a public interest litigation involving matters pertaining to service issues and further the petitioner has no legal right to maintain the present petition as even otherwise no cause of action has arisen.

9. According to Sri Mourya learned Standing Counsel once the dismissed employee being the husband of the petitioner is not before this Court and he has availed his remedy before appellate authority by filing appeal against the dismissal order as stated by the learned counsel for the petitioner then this petition need not further retain the board and the same is liable to be dismissed with heavy cost.

POINTS OF DETERMINATION

(a) Locus standi of the petitioner to institute and maintain the proceeding under Article 226 of the Constitution of India.

(b) The issue relating to constitutional validity of Rule 3-B-(iv) of the Rules, 1999.

DISCUSSION

10. We have heard learned counsel for the parties and perused the record and with the consent of the parties, the present petition is being decided without seeking any response from the respondents.

11. A question arises as to whether the petitioner qualifies the definition of an aggrieved person or not in order to not only institute but to maintain the present petition. To answer the said question, the petitioner has to show herself to be an aggrieved party so as to have some interest while putting into motion the present proceedings.

12. The words “aggrieved person” have subject matter of judicial scrutiny in empty number of judgments of Hon’ble Supreme Court. To start with reference is being made to the case of **Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others (1976) 1 SCC 671** paragraphs 12, 13, 14, 15, 16, 30, 34 & 37 quoted hereunder:-

“12. According to most English decisions, in order to have the

locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and, in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances.

13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of rigid, exact and comprehensive definition. At best, its features can be described in a broad, tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction.

14. We will first take up that line of cases in which an "aggrieved person" has been held to be one who has a more particular or peculiar interest of his own beyond that of the general public, in seeing that the law is properly administered. The leading case in this line in Queen v. Justices of Surrey(1) decided as far back as 1870. There, on the application by the highway board the Justices made certificates that certain portions of three roads were unnecessary. As a result, it was

ordered that the roads should cease to be repaired by the parishes.

*15. E, an inhabitant of one of the parishes, and living in the neighbourhood of the roads, obtained a rule for a certiorari to bring up the orders and certificates for the purpose of quashing them on the ground that they were void by reason of the notices not having been affixed at the places required by law. On the point of locus standi (following an earlier decision *Hex v. Taunton St. Mary*(2), the Court held that though a certiorari is not a writ of course, yet as the applicant had by reason of his local situation a peculiar grievance of his own, and was not merely applying as one of the public, he was entitled to the writ *ex debito justitiae*.*

16. It is to be noted that in this case was living in the neighbourhood of the roads were to be abandoned as a result of the certificates issued by the Justices. He would have suffered special inconvenience by the abandonment. Thus had shown a particular grievance of his own beyond some inconvenience suffered by the general public. He had a right to object to the grant of the Certificate. Non-publication of the notice at all the places in accordance with law, had seriously prejudiced him in the exercise of that legal right.

*30. Typical of the cases in which a strict construction was put on the expression "person aggrieved", is *Buxton and ors. v. Minister of Housing and Local Government*(4). There, an appeal by a Company against the refusal of the Local Planning Authority of permission to develop land owned by the Company by digging chalk, was allowed by the Minister. Owners of adjacent property applied to the High Court under s. 31(1) of the Town and Country Planning Act, 1959 to quash the decision of the Minister on the ground that the proposed operations by the company would injure their land, and that they were 'persons aggrieved' by the action of the Minister. It was held*

that the expression 'person aggrieved' in a statute meant a person who had suffered a legal grievance; anyone given the right under Section 37 of the Act of 1959 to have his representation considered by the Minister was a person aggrieved, thus Section 31 applied, if those rights were infringed; but the applicants had no right under the statute, and no legal rights had been infringed and therefore they were not entitled to challenge the Minister's decision. Salmon J. quoted with approval these observations of James T. J. in In Re Sidebotham:-

"The words 'person aggrieved' do not really means a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, 'a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrong fully refused him something, or wrongfully affected his title to something."

34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though (1) the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, in fringement of some legal right or prejudice to some legal interest in hearing the petitioner is necessary to give him a locus standi in the matter.

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddling interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though

they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.”

13. In **Thammanna Vs. K Veera Reddy and others (1980) 4 SCC 62** paragraphs 15, 16 & 17 are quoted hereunder:-

“15. It was not obligatory for the Election-Petitioner to join the appellant as a respondent. There were no allegations or claims in the election-petition which would attract Section 82 of the Act. From that point of view, the appellant was not a necessary party to be impleaded. Of course, if the appellant had made an application within the time prescribed, in compliance with Section 86(4) of the Act, the Court would have been bound to join him as a respondent. But the question of Section 86 (4) coming into play never arose as the Election-Petitioner had already impleaded the appellant as Respondent 5 in the election- petition. Even so, Respondent 5 did not join the controversy. He neither joined issue with the contesting respondent 1, nor did he do anything tangible to show that he had made a common cause with the Election-Petitioner against Respondent 1. In fact, the only parties between whom the matters in controversy were at issue, were the Election-Petitioner and Respondent 1. The other respondents, including the appellant, did not participate or side with either contestant in that controversy.

16. Although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of

the case, nevertheless, normally "a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something."

17. In the face of the stark facts of the case, detailed above, it is not possible to say that the appellant was aggrieved or prejudicially affected by the decision of the High Court, dismissing the election-petition.

14. In Dr Duryodhan Sahu and others Vs. Jitendra Kumar Mishra and others (1998) 7 SCC 273 paragraphs 16 & 17 are quoted hereunder:-

16. In Thammanna versus K. Veera Reddy and other (1980) 4 S.C.C. 62 it was held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

17. In Jasbhai Motibhai Desai Versus Roshan Kumar Haji Bashir Ahmed and others (1976) 1.S.C.C. 671 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. The Court observed:

"...It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him'.

15. In **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and others (2013) 4 SCC 465** paragraphs 9, 10, 11, 12, 13, 14, 16, 17 are quoted herein under:-

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) v. State of West Bengal & others, AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: *Shanti Kumar R. Chanji v. Home Insurance Co. of New York*, AIR 1974 SC 1719; and *State of Rajasthan & Ors. v. Union of India & Ors.*, AIR 1977 SC 1361).

11. In *Anand Sharadchandra Oka v. University of Mumbai*, AIR 2008 SC 1289, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In *A. Subhash Babu v. State of A. P.* , AIR 2011 SC 3031, this Court held:

“The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.”

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression, ‘next friend’ means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody.

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous

persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, “ordinarily meddlesome bystanders are not granted a Visa”. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it.

16. In Ghulam Qadir v. Special Tribunal & Ors., (2002) 1 SCC 33, this Court considered a similar issue and observed as under:– “There is no dispute regarding the legal proposition that the rights under [Article 226](#) of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the

locus standi.”

(Emphasis added)

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

16. Now another fact which needs to be examined is the fact as to whether the present petition which is in fact in the guise of public interest litigation is maintainable at the behest and instance of the petitioner.

17. Learned counsel for the petitioner has relied upon the judgment of the Hon’ble Apex Court in the case of **Raju Ramsingh Vasave (Supra)** while referring to paragraph 45.

45. We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as Cate "Segy HOW to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so.

18. According to Sri Yadav, the present proceedings cannot be said to be a public interest litigation but it is Public Law Litigation and thus the same is maintainable.

19. On the other hand, learned Standing Counsel has referred to certain judgments of the Apex Court so as to contend that in service matter Public Interest Litigation is not maintainable. Namely:-

20. In **Dr. B. Singh Vs. Union of India and others (2004) 3 SCC 363** paragraph 16 is quoted hereunder:-

“16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining publicity and giving adverse publicity to their opponents. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road

and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such coopters, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases show proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the Court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.”

21. In **Dattaraj Nathuji Thaware Vs. State of Maharashtra (2005) 1 SCC 590** paragraph 16 is quoted hereunder:-

*“16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues*

unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining publicity and giving adverse publicity to their opponents. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copiers, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases show proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the Court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.”

22. In **Neetu Vs. State of Punjab and others (2007) 10 SCC 614** paragraphs 7 and 8 are quoted hereunder:-

“(7) When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object.

(8) Therefore, as rightly submitted by learned counsel for the appellant, writ petition itself was not maintainable, to that extent the High Court's order cannot be maintained. But it appears that the official respondents have already initiated action as regards the caste certificate. Though PIL is not to be entertained in service matters, that does not stand on the way of the officials from examining the question in the right perspective. In the present case admittedly the officials have initiated action. What action will be taken in such proceedings is not the subject matter of controversy in the present appeal. However, it shall not be construed as if we have expressed any opinion on the merits of the proceedings stated to be pending. The only issue which has been examined relates to the locus standi of the writ petitioner (respondent No.7) to file PIL.

23. Analysing the judgment meticulously, this Court finds that the judgment so relied upon by the learned counsel for the petitioner being **Raju Ramsingh Vasave (Supra)** is not applicable in the facts of the case as the present case does not fall within the exceptions so culled out in the said judgment. The present case also does not come within the parameters of Public Law Litigation and further the issue so sought to be raised by the petitioner is not of any public importance.

24. Nonetheless, the present case is nothing but the proceedings relating to Public Interest Litigation in service matters which as per the law laid down by the Hon'ble Apex Court is not maintainable.

25. There is another reason for not interfering in the present proceedings at the instance of the petitioner particularly in view of the fact that the petitioner happens to be the wife of Yogesh Kumar, who had been dismissed from service and further he has also preferred departmental appeal which is stated to be pending thus the present proceeding is nothing but collateral proceedings just in order to obtain a benefit indirectly which cannot be granted by this Court directly particularly when the dismissal order has not been challenged by an aggrieved party being the dismissed employee itself.

26. Petitioner herein is not an aggrieved party and she happens to be a wife of the dismissed employee, who has her own agenda of getting not only monetary benefits but other benefits attached thereto which cannot be granted by this Court in present proceeding. Nonetheless this Court could have taken a pause on the issue of maintainability of present petition but this Court is also examining the validity of Rule 3-B-(iv) of the 1999 Rules.

27. This Court before embarking any enquiry with respect to the constitutional validity of the provisions contained under Rule 3-B-(iv) of the Rules, 1999 has to bear in mind the relevant factors which need to be taken into consideration for adjudicating the validity of the statutory enactment while forming an opinion as to whether the same needs to be declared to be ultra-virus.

28. It is the settled principal of law that in case any party asserts and assails the validity of a provision on the ground that it is violative of Article 309 and 311 of the Constitution of India then it is for the said party to not only make necessary pleadings but also adduce materials to show that the same is in violation of Article 309 and 311 of the Constitution of India. Even otherwise the presumption is always that legislature understands and correctly appreciates the need of the people and in order to rebut the said presumption, the onus is upon the party who alleges it to be unconstitutional.

29. The Hon'ble Supreme Court in the case of **Chiranjit Lal Chaudhary Vs. Union of India, AIR 1951 SC 41** in paragraph-10 has held as under: -

"..I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles..."

30. In the case of **State of Bihar Vs. Sm. Charusila Dasi, AIR 1959 SC 1002**, in paragraph 14, the Apex Court has held as under:-

"... It is now well settled that there is a general presumption

that the legislature does not intend to exceed its jurisdiction, and it is a sound principle of construction that the Act of a sovereign legislature should, if possible, receive such an interpretation as will make it operative and not in-operative;.."

31. In **AIR 1997 SC 1511, State of Bihar vs. Bihar Distillery Ltd.**, the Supreme Court in paragraph 18 has held as under:-

"18. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void."

32. In **Greater Bombay Coop. Bank Ltd. Vs. United Yarn Tex (P) Ltd, 2007(6) SCC 236**, provides as under:-

"82. The constitutional validity of an Act can be challenged only on two grounds, viz. (i) lack of legislative competence; and (ii) violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provision. In State of A. P. & Ors. v. McDowell & Co. & Ors. [(1996) 3 SCC 709], this Court has opined that except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the afore-mentioned two grounds."

(83) Power to enact a law is derived by the State Assembly from List II of the Seventh Schedule of the Constitution. Entry 32 confers upon a State Legislature the power to constitute co-operative societies. The State of Maharashtra and the State of Andhra Pradesh both had enacted the MCS Act, 1960 and the APCS Act, 1964 in exercise of the power vested in them by Entry 32 of List II of the Seventh Schedule of the Constitution. Power to enact would include the power to re-enact or validate any provision of law in the State Legislature, provided the same falls in an Entry of List II of the Seventh Schedule of the Constitution with the restriction that such enactment should not nullify a judgment of the competent court of law. In the appeals/SLPs/petitions filed against the judgment of the Andhra Pradesh High Court, the legislative competence of the State is involved for consideration. Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances, it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the constitutional courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when Parliament or the State Legislature had assumed to enact a law which is void, either for want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the Fundamental Rights enshrined and guaranteed in Part III of the Constitution.

(84) As observed by this Court in CST v. Radhakrishnan in considering the validity of a Statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of

constitutional principles. For sustaining the constitutionality of an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. It is also well- settled that the courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on authority can be construed in conformity with legislative intent of exercise of power within constitutional limitations. Where a Statute is silent or is inarticulate, the Court would attempt to transmutate the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to rule of "reading down" the provisions if it becomes necessary to uphold the validity of the law."

33. In **Zaheer Ahmed Latifur Rehman Sheikh Vs. State of Maharashtra and others, JT 2010(4) SCC 256** in paragraph 34 and 35, the Supreme Court has held as under:-

"(34) It is a well-established rule of interpretation that the entries in the List being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. Each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. [Reference in this regard may be made to the decisions of this Court in Navinchandra Mafatlal v. Commr. of I.T. [AIR 1955 SC 58], State of Maharashtra v. Bharat Shanti lal Shah [(2008) 13 SCC

5]]. It is also a cardinal rule of interpretation that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature [Reference may be made to the cases of: *Charanjit Lal Choudhary v. Union of India* [AIR 1951 SC 41], *T.M.A. Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481], *Karnataka Bank Ltd. State of AP* [(2008) 2 SCC 254]]

(35) One of the proven methods of examining the legislative competence of a legislature with regard to an enactment is by the application of the doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. This doctrine is an established principle of law in India recognized not only by this Court, but also by various High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the Court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on any of the matters enumerated in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the matters in the

Union List."

34. In **Namit Sharma Vs. Union of India, 2013(1) SCC 745**, in paragraph 51 and 61, the Supreme Court has held as under:-

"(51) Another most significant canon of determination of constitutionality is that the courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The courts would accept an interpretation which would be in favour of the constitutionality, than an approach which would render the law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the courts. The courts would preferably put into service the principle of 'reading down' or 'reading into' the provision to make it effective, workable and ensure the attainment of the object of the Act. These are the principles which clearly emerge from the consistent view taken by this court in its various pronouncements.

(61) It is a settled principle of law, as stated earlier, that courts would generally adopt an interpretation which is favourable to and tilts towards the constitutionality of a statute, with the aid of the principles like 'reading into' and/or 'reading down' the relevant provisions, as opposed to declaring a provision unconstitutional. The courts can also bridge the gaps that have been left by the legislature inadvertently. We are of the considered view that both these principles have to be applied while interpreting Section 12(5). It is the application of these principles that would render the provision constitutional and not opposed to the doctrine of equality. Rather the application of the provision would become more effective."

35. Another additional aspect needs to be further noticed at this juncture that though the earlier law was to the effect that the Constitutional validity of Act can be challenged only on two grounds namely (I), lack of legislative

competence and (ii) violation of any of the fundamental rights guaranteed in Part-III of the Constitution. However, the exception to the said Rule has been noticed in the case of *Shayara Bano Vs. Union of India*, 2017 (9) SCC 1, wherein a third exception was carved out with regard to the fact that the Courts of law can even hold the statutory enactment to be ultra vires, where there is "manifest arbitrariness. The Hon'ble Apex Court in its majority opinion 3:2 has held in paragraphs-87, 88, 89 and 101 as under: -

"(87) The thread of reasonableness runs through the entire fundamental rights Chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three Judges' Bench decision in McDowell (supra) when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.

(88) We only need to point out that even after McDowell (supra), this Court has in fact negated statutory law on the ground of it being arbitrary and therefore violative of Article 14 of the Constitution of India. In Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1, this Court held that after passage of time, a law can become arbitrary, and, therefore, the freezing of rents at a 1940 market value under the Bombay Rent Act would be arbitrary and violative of Article 14

of the Constitution of India (see paragraphs 8 to 15 and 31). (89) Similarly in Mardia Chemicals Ltd. & Ors. v. Union of India & Ors. etc. etc., (2004) 4 SCC 311 at 354, this Court struck down Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as follows:

"(64) The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that: (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled, (v) 75% of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not only onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution. (90) In two other fairly recent judgments namely State of Tamil Nadu v. K. Shyam Sunder (2011) 8 SCC 737 at paragraphs 50 to 53, and A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy (2011) 9 SCC 286 at paragraph 29, this Court reiterated the position of law that a legislation can be struck down on the ground that it is arbitrary and therefore violative of Article 14 of the Constitution.

(101) It will be noticed that a Constitution Bench of this

Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

36. Recently, in one of the decisions in the case of **K.S. Puttaswamy (Aadhar) Vs. Union of India, reported in 2019 (1) SCC 1** in paragraphs 103, 104 and 105 has held as under:-

"103. In support of the aforesaid proposition that an Act of the Parliament can be invalidated only on the aforesaid two grounds, passages from various judgments were extracted 21. The Court also noted the observations from State of A.P. & Ors. v. MCDOWELL & Co. & Ors.²² wherein it was held that apart from the aforesaid two grounds, no third ground is available to validate any piece of legislation. In the process, it was further noted that in Rajbala & Ors. v. State of Haryana & Ors.²³ (which followed MCDOWELL & Co. case), the Court held that a legislation cannot be declared unconstitutional on the ground

that it is 'arbitrary' inasmuch as examining as to whether a particular Act is arbitrary or not implies a value judgment and courts do not examine the wisdom of legislative choices, and, therefore, cannot undertake this exercise.

104. The issue whether law can be declared unconstitutional on the ground of arbitrariness has received the attention of this Court in a Constitution Bench judgment in the case of Shayara Bano v. Union of India & Ors.²⁴ R.F. Nariman and U.U. Lalit, JJ. 21 State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312; Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1 22 (1996) 3 SCC 709 23 (2016) 2 SCC 445 24 (2017) 9 SCC 1 discredited the ratio of the aforesaid judgments wherein the Court had held that a law cannot be declared unconstitutional on the ground that it is arbitrary. The Judges pointed out the larger Bench judgment in the case of Dr. K.R. Lakshmanan v. State of T.N. & Anr.²⁵ and Maneka Gandhi v. Union of India & Anr.²⁶ where 'manifest arbitrariness' is recognised as the third ground on which the legislative Act can be invalidated. Following discussion in this behalf is worthy of note:

"87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but

would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.

88. We only need to point out that even after McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] , this Court has in fact negated statutory law on the ground of it being arbitrary and therefore violative of Article 14 of the Constitution of India. In Malpe Vishwanath Acharya v. State of Maharashtra [Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1] , this Court held that after passage of time, a law can become arbitrary, and, 25 (1996) 2 SCC 226 26 (1978) 1 SCC 248 therefore, the freezing of rents at a 1940 market value under the Bombay Rent Act would be arbitrary and violative of Article 14 of the Constitution of India (see paras 8 to 15 and 31).

xx

xx

xx

99. However, in State of Bihar v. Bihar Distillery Ltd. [State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453] , SCC at para 22, in State of M.P. v. Rakesh Kohli [State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481], SCC at paras 17 to 19, in Rajbala v. State of Haryana [Rajbala v. State of Haryana, (2016) 2 SCC 445], SCC at paras 53 to 65 and in Binoy Viswam v. Union of India [Binoy Viswam v. Union of India, (2017) 7 SCC 59], SCC at paras 80 to 82, McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] was read as being an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14. As has been noted by us earlier in this judgment, McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] itself is per incuriam, not having noticed several judgments of Benches of equal or

higher strength, its reasoning even otherwise being flawed. The judgments, following McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] are, therefore, no longer good law."

105. The historical development of the doctrine of arbitrariness has been noticed by the said Judges in Shayara Bano in detail. It would be suffice to reproduce paragraphs 67 to 69 of the said judgment as the discussion in these paras provide a sufficient guide as to how a doctrine of arbitrariness is to be applied while adjudging the constitutional validity of a legislation.

"67. We now come to the development of the doctrine of arbitrariness and its application to State action as a distinct doctrine on which State action may be struck down as being violative of the rule of law contained in Article 14. In a significant passage, Bhagwati, J., in E.P. Royappa v. State of T.N. stated: (SCC p. 38, para 85) "85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both

Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all- embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16." (emphasis supplied)

68. This was further fleshed out in *Maneka Gandhi v.*

Union of India, where, after stating that various fundamental rights must be read together and must overlap and fertilise each other, Bhagwati, J., further amplified this doctrine as follows: (SCC pp. 283-84, para 7) "The nature and requirement of the procedure under Article 217. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P. Royappa v. State of T.N. , namely, that: (SCC p. 38, para 85) "85. ... From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14....' Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order

to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."
(emphasis supplied)

37. This Court has also considered the validity of a statutory enactment after following the judgments of Hon'ble Apex Court, while holding that the third ground is also available with a party, who alleges that the statutory enactment is unconstitutional, but it has been observed that the party, who alleges that an enactment is unconstitutional, is possessed with a heavy burden to prove the same and he cannot discharge its onus in a cavalier manner by merely stating that the Amendment Act is unreasonable. In the case of **Noida Employees Association and others Vs. State of U.P, 2019(5) ADJ 602**, this High Court has held as under: -

"23. Coming to the exact challenge raised by the petitioners, the learned Advocate General would submit, the challenge being to the enactment of the State Legislature, the grounds of challenge are limited i.e. two and strict, being either the Act be shown to be beyond the legislative competence of the State Legislature or in violation of any of the fundamental rights guaranteed under Part-III of the Constitution of India or of any other constitutional provision. There does not exist any third ground to challenge the Amending Act. Relying on that principle firmly emphasised by the Supreme Court in State of A.P. & Ors Vs MCDOWELL & Co. & Ors., (1996) 3 SCC 709, it has been submitted, the burden to establish unconstitutionality of a Statute is a heavy burden that lies strictly on the challenger/petitioners. It cannot be discharged in a cavalier manner by merely stating that the Amending Act is arbitrary or unreasonable. In absence of any challenge raised to the legislative competence or any constitutional infirmity in the Amending Act, it does not lie with the petitioners to set up a

loose plea of the Amending Act being contrary to the original Act. Such a ground does not exist. According to him, 'arbitrariness' does not exist as a ground to challenge plenary legislation."

38. Now let us examine the various provisions so engrafted in the constitution as well as the statutory enactment which are occupying the field.

ARTICLES OF CONSTITUTION OF INDIA

309. Recruitment and conditions of service of persons serving the Union or a State.—*Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State: Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor 2*** of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.*

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1) *No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. [(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable*

opportunity of being heard in respect of those charges [Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

**THE UTTAR PRADESH GOVERNMENT SERVANT
(DISCIPLINE AND APPEAL) RULES, 1999**

In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in suppression of the Civil Service (Classification, Control and Appeal) Rules, 1930 and Punishment and Appeal Rules for Subordinate Service Uttar Pradesh, 1932, the Governor is pleased to make the following rules :

1. Short title and commencement.-(1) These rules may be called the Uttar Pradesh Government Servant (Discipline and Appeal)

Rules, 1999.

(2) They shall come into force at once.

(3) They shall apply to Government servants under the rule making power of the Governor under the proviso to Article 309 of the Constitution except the Officers and the Servants of the High Court of Judicature at Allahabad covered under Article 229 of the Constitution of India.

3. Penalties:-*The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon the Government Servant:*

A- Minor Penalties.....

B- Major Penalties

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale:

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualify from future employment.

39. Article 309 of the Constitution of India itself provides that subject to the provisions of the Constitution, Acts of the appropriate legislature, they may regulate the recruitment and condition of service of persons appointed to public services and post in connection with the affairs of the Union or of any State.

40. Proviso has also been appended to Article 309 of the Constitution of India envisaging that it shall be competent for President or such persons as it may direct in the case of services and post in connection with the affairs of Union and for the Governor of a State or such person as it may direct in case of services and post in connection with the affairs of the State to make Rules regulating the recruitment and condition of service of persons appointed to such

services and post until provision in that behalf is made by or under an Act of appropriate legislature.

41. Notably Article 311 of the Constitution of India puts an obligation that no person who is a member of civil Services of Union or All India Service or a Civil Service of State or holds Civil Post under Union or a State shall be dismissed or removed by an authority subordinate to that by which he/she was appointed.

42. Undisputedly, in the case in hand the Rules, 1999 have been enacted in exercise of powers conferred by proviso to Article 309 of the Constitution of India which itself explicitly depicts that the enactment of the Rules is supported by statutory backing and the source of power is referable to proviso to Article 309 of the Constitution of India.

43. Now a question arises as to whether insertion of Rule 3-B-(iv) of the Rules, 1999 in so far as it provides for a disqualification for future employment in case of dismissal ultra-virus or not.

44. A bare reading of Article 311 of the Constitution of India itself depicts that a safeguard has been provided to the persons holding civil post either under Union or State that they should not be dismissed or removed by the authority subordinate to that by which they have been appointed and further the fact that before dismissing removing or reducing in rank an enquiry is must while giving reasonable opportunity to be heard.

45. It is not the case of the petitioner that there has been any violation of Article 311 of the Constitution of India with respect to dismissal or removal by an authority subordinate to appointing authority or the dismissal, removal or reduction has been made without giving reasonable opportunity. However, according to the pleadings and the arguments so set forth by the counsel for the petitioner, the words pertaining to disqualification from future employment could not have been attached with the penalty of dismissal.

46. This Court finds that the argument so sought to be raised by the learned counsel for the petitioner is totally misconceived besides the misplaced and also out of context particularly in view of the fact that in the matter of service jurisprudence, there is a marked difference between dismissal and removal. There is always disqualification attached for future employment in former case and in the later case, there is no such disqualification for future employment.

47. Proviso to Article 309 of the Constitution of India itself confers the source of framing of the Rules and rightly so the Rules, 1999 have been framed and so far as Article 311 of the Constitution of India is concerned it guarantees certain protection to the person holding civil post either in the Union or State.

48. The petitioner herein cannot question the wisdom of the employer to include or exclude any penalty but the Constitutional guarantee so bestowed under Article 311 of the Constitution of India remains alive with respect to necessary safeguard that the employer or the officer working under Union or State cannot be dismissed or removed by an authority below the appointing authority or without affording reasonable opportunity in this regard. Hence the submissions so raised by the learned counsel for the petitioner that Rule 3-B-(iv) of the Rules 1999 is totally misplaced and misconceived and out of context.

49. Hon'ble Apex Court in the recent judgment in **Civil Appeal No.2365 of 2020, Nisha Priya Bhatiya Vs. Union of India** decided on 24.4.2020 in paragraph 42 has observed as under:-

42. A conjoint reading of Articles 309 and 311 reveals that Article 311 is confined to the cases wherein an inquiry has been commenced against an employee and an action of penal nature is sought to be taken. Whereas, Article 309 covers the broad spectrum of conditions of service and holds a wider ground as compared to Article 311. That would also include conditions of service beyond mere dismissal, removal or

reduction in rank. It holds merit to state that this wide ground contemplated under Article 309 also takes in its sweep the conditions regarding termination of service including compulsory retirement. In Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court 12, this Court touched upon the ambit and scope of Article 309 of the Constitution and expounded that the expression "conditions of service" takes within its sweep the cases of dismissal or removal from service.

50. Applying the judgments the present facts of the case an irresistible conclusion stands drawn that in view of the provisions contained under Article 309 and 311 of the Constitution of India, the conditions of services takes within its ambit, the cases of dismissal or removal from service.

51. Nevertheless the penalties of dismissal and removal is nowhere foreign in service jurisprudence as the said penalties amongst others finds its presence in almost all the disciplinary Rules through out the various services and there difference is widely accepted.

52. The distinction between dismissal and removal had also been subject matter of judicial scrutiny by the Hon'ble Apex Court in several judgments. Namely:

In **AIR 1954 S.C. 369 Shyamlal v. State of Uttar Pradesh and another** relevant para 15 is quoted hereunder:-

" The word "removal" which is used in the rules is also used in this clause and it may safely be taken, for reasons stated above, that under the Constitution removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal. Indeed, in our recent decision in 'Satischandra Anand v. Union of India', AIR 1953 SC 250 at p. 252 (D) it has been said that these terms have been used in the same sense in Article 311."

53. Following the said judgment the Hon'ble Apex Court in the case of **Dr. Dattatraya Mahadev Nadkarni Vs. Municipal Corporation of Greater**

Bombay (1992) 2 SCC 547 in paragraph nos. 6, 7 & 8 have observed as under:-

6. *We find force in the contention raised by the appellant. In Shyam Lal v. State of U.P.¹ while dealing with the provisions of Article 311 of the Constitution of India it was held that under the Constitution removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal. Removal, like dismissal, no doubt brings about a termination of service but every termination of service does not amount to dismissal or removal.*

7. *In S.R. Tiwari v. District Board, Agra² (SCR p. 69) it has been observed:*

"It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order. The form may be merely to camouflage an order of dismissal for misconduct, and it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form merely of determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely because of the form of the order in giving effect to the rights conferred by statutory rules upon the employee."

8. *The only difference in the punishment of dismissal and removal is that in case of dismissal the employee is disqualified from future employment while in case of removal he is not debarred from getting future employment. In the present case a perusal of Section 83 clearly shows that the punishments provided are: fine, reduction, suspension or dismissal from service.*

54. Net analysis of the above caption judgment itself mandates that though

the penalty of dismissal and removal stand on same footing except as to the issue future employment. Mentioning thereby that by no stretch of imagination it can be said that attachment of a disqualification of future employment can where be said to be ultra-virus, arbitrary or discriminatory.

55 Resultantly, in view of the foregoing discussions, the present writ petition is wholly misconceived besides being not maintainable and is liable to be dismissed.

56. Accordingly, it is **dismissed**.

57. No order as to costs.

Order Date :- 26.5.2022

piyush