

**HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**

<b>Case No.</b>	<b>WA No.478/2021</b>
<b>Parties Name</b>	<b>Sanjay Jain Vs. The State of MP &amp; Ors.</b>
<b>Date of Order</b>	<b>12/07/21</b>
<b>Bench Constituted</b>	<b><u>Division Bench:</u> Justice Sujoy Paul Justice Anil Verma</b>
<b>Order passed by</b>	<b>Justice Sujoy Paul</b>
<b>Whether approved for reporting</b>	<b>Yes</b>
<b>Name of counsels for parties</b>	Ms. Deepika Rathi, learned counsel for the appellant. Shri Shrey Raj Saxena, learned Dy. Advocate General for the respondents/State.
<b>Law Point</b>	<p><b>*Service Law-Clause 22 of the Contract-Deeming</b> provision of termination on remaining absent for more than one month-The principles of natural justice must be read into the provision. The Clause-22 is interpreted by taking into account the similar provisions of standing orders etc.</p> <p><b>*Fair Play and Reasonableness-</b>The procedure adopted by employer must be just fair and reasonable. Moreso when its impact is on the right of livelihood of a person.</p> <p><b>*Validity of order-Judicial Review-</b>The validity of an order is to be judged on the basis of the reasons mentioned in the impugned order. Reasons cannot be supplemented by way of filing return in the Court.</p> <p><b>*Natural Justice-</b>Any order which entail civil consequences could be passed only by following the</p>

	<p>principles of natural justice.</p> <p><b>*Backwages/Consequential Benefits-</b>Action of termination is disapproved, but liberty is reserved to the employer to proceed against the petitioner within stipulated time, failing which, employer shall be liable to pay full backwages and other consequential benefits. If inquiry is conducted and order is passed, the grant of backwages and other benefits will depend on the outcome of the inquiry/action.</p>
<b>Significant Paragraph Numbers</b>	<b>11 to 24</b>

**ORDER**  
(Passed on this 12<sup>th</sup> day of July, 2021)

**Sujoy Paul, J. :**

This intra-court appeal assails the order dated 10/02/2021 passed in WP No.2250/2021 whereby writ petition filed by appellant was dismissed by holding that as per Clause-22 of the Contract, his services are deemed to have been terminated because he remained absent for a period of one month.

2) The appellant was appointed as Sub-Engineer by order dated 11/10/2006. The appellant was transferred by order dated 28/07/2016 from Janpad Panchayat - Nalchha to Janpad Panchayat - Tirala. The case of petitioner is that despite his entitlement and directions of higher authorities, the salary of appellant was stopped on the ground that his name is not reflected in the relevant departmental portal. The appellant being aggrieved with this served a legal notice, approached the authorities from pillar to post including the Human Rights Commission, but when such efforts could not fetch any result, filed WP No.2250/2021.

3) The appellant called in question the legality, validity and propriety of the order dated 03/09/2019 (Annexure P/1) whereby in

reply to the legal notice sent by the appellant, the Department informed him that since appellant has tendered resignation, the question of taking work from him and payment of salary does not arise. The specific case of petitioner before the Writ Court was that i) petitioner has never tendered resignation, ii) there was no willful absence on the part of appellant. Indeed, the Department is not permitting him to work and consequently not paying him salary.

4) Ms. Deepika Rathi, learned counsel for appellant submits that the impugned order (Annexure P/1) nowhere shows that Clause-22 of Contract was pressed into service by the department and appellant was deemed to be terminated by operation of Clause 22. Indeed, it assigns a different reason i.e. resignation tendered by the petitioner. No resignation letter could be produced before the writ Court. Petitioner categorically stated that he never tendered resignation.

5) Furthermore, it is contended that the inquiry report dated 01.03.2018 (Annexure P/9) shows that the controlling authority of petitioner has not furnished any information to the inquiry officer regarding resignation submitted by petitioner. The conclusion of inquiry report shows that it was clearly established that factum of tendering resignation by appellant is not at all established.

6) The stand of petitioner is that he was all along willing to perform his duties, but was prevented to do so for the reasons attributable to the respondents. The reliance is placed on the order dated 18.03.2015 passed in *WP No.20952/2012 (Amit Chandra Vs. State of MP)* and another order dated 04.07.2013 passed in *WP No.6937/2013 (Rahul Jain vs. State of MP & Ors.)*.

7) Lastly, it is urged that appellant cannot be said to be unauthorizedly absent for one month in the factual backdrop of this matter and no deeming provision can be applied without giving opportunity to the appellant.

8) Shri S.R Saxena, learned Dy. AG supported the impugned order

by contending that Clause 22 contains a deeming provision because of which appellant's services stood automatically terminated after absence of one month. No fault can be found in the order of writ Court.

9) No other point is pressed by learned counsel for the parties.

10) We have heard the parties at length and perused the record.

11) The singular reason assigned in the impugned order dated 03.09.2019 is that appellant has tendered resignation. This finding is specifically controverted by the appellant and his stand that he has not tendered resignation could not be demolished by filing copy of resignation. Interestingly, in the inquiry report dated 01.03.2018 (Annexure P/9), it is recorded as under:-

**निष्कर्ष:-**

“श्री संजय जैन संविदा उपयंत्री जनपद पंचायत नालछा जो जिला प्रशासन के द्वारा प्रशासकीय आवश्यकता के अधीन जनपद पंचायत तिरला में कार्य कर रहे है, के द्वारा माननीय मानव अधिकार आयोग म.प्र. भोपाल को की गई शिकायत के संबंध में संबंधितों के लिखित कथन अभिलिखित कर समीक्षा की गई समीक्षा के दौरान इन्हें त्याग-पत्र दिये जाने एवं सेक्टर परिवर्तन किये जाने के तथ्य प्रमाणित नहीं पाये गये। लंबित वेतन भुगतान के संबंध में तत्कालीन मुख्य कार्यपालन अधिकारी जनपद पंचायत तिरला श्री माधवचार्य के कथन अनुसार उनके कार्यकाल में इनकी उपस्थित अवधि का वेतन नहीं रोके जाने के लिखित कथन के अनुक्रम में वेतन नहीं रोका गया है। उपरोक्त तथ्यों के आधार पर शिकायत प्रमाणित नहीं पाई गई। श्री संजय जैन दिनांक 03.07.2017 से वर्तमान तक बिना सूचना के कर्तव्य से अनुपस्थित है।

उपरोक्त जाँच उपलब्ध समस्त अभिलेख एवं सभी तथ्यों के आधार पर की गई। जाँच प्रतिवेदन आवश्यक कार्यवाही हेतु आपकी ओर सादर प्रेषित है।”

12) Thus, factum of resignation could not be established by the respondents. Report further shows that controlling authority of petitioner did not furnish necessary information regarding petitioner's absence. Relevant portion reads thus:

“श्री संजय जैन के द्वारा अपने सरदारपुर के कार्यकाल के बकाया ऐरियर, माह अप्रैल 2016 एवं मई-जून 2017 का वेतन भुगतान न किये जाने का उल्लेख किया गया है। इस संबंध में मुख्य कार्यपालन अधिकारी जनपद पंचायत सरदारपुर को कार्यालयीन पत्र क्रमांक 373 दिनांक 08.02.2018 एवं पत्र. क्रमांक 572 दिनांक 24.02.2018 के द्वारा लंबित ऐरियर के संबंध में प्रतिवेदन प्रस्तुत किये जाने हेतु लिखा गया किन्तु उनके द्वारा कोई प्रतिवेदन प्रस्तुत नहीं किया गया।

श्री संजय जैन के द्वारा वेतन भुगतान न किया जाने का उल्लेख किया गया है। इस संबंध में अधोहस्ताक्षरकर्ता द्वारा मुख्य कार्यपालन अधिकारी जनपद पंचायत नालछा को पत्र क्रमांक 373 दिनांक 08.02.2018 एवं पत्र क्रमांक 570 दिनांक 24.02.2018 के द्वारा लंबित वेतन का नियमानुसार निराकरण किये जाने हेतु लिखते हुए प्रतिवेदन प्रस्तुत किये जाने के लिए लिखा गया, किन्तु मुख्य कार्यपालन अधिकारी जनपद पंचायत नालछा के द्वारा अद्यतन कोई प्रतिवेदन प्रस्तुत नहीं किया गया।

श्री संजय जैन के द्वारा त्याग-पत्र दिये जाने के संबंध में मुख्य कार्यपालन अधिकारी जनपद पंचायत तिरला को कार्यालयीन पत्र क्रमांक 480 दिनांक 20.02.2018 के द्वारा श्री संजय जैन जनपद पंचायत तिरला में कब से अनुपस्थित है, क्या श्री जैन द्वारा किसी प्रकार का आवेदन अथवा त्याग पत्र प्रस्तुत किया गया है, के संबंध में प्रतिवेदन प्रस्तुत किये जाने हेतु लिख गया, किन्तु मुख्य कार्यपालन अधिकारी जनपद पंचायत तिरला से कोई प्रतिवेदन आज दिनांक तक प्राप्त नहीं हुआ।”

This shows that conclusion drawn by inquiring authority regarding petitioner's absence is not founded upon any relevant information obtained from the controlling authority. Thus, inquiry report is cryptic, contains contradictory findings about absence and could not have been a reason to invoke Clause 22 of the Contract. Moreso, when petitioner was not informed about any allegation against him.

**13)** This is trite that validity of an order must be examined on the grounds mentioned therein and it cannot be substituted and supported by assigning different reasons by filing counter affidavit in the Court. The constitution Bench of Supreme Court in *(1978) 1 SCC 405 (Mohinder Singh Gill v. Chief Election Commr.)* opined as under :-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16]* :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he

intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

*(Emphasis Supplied)*

14) At the cost of repetition, in the impugned order, the respondents have not taken assistance of Clause 22 of the contract. However, they took a different stand before the learned Single Judge. Clause 22 reads as under:-

(22) “चयनित उम्मीदवार, उसकी पदस्थापना के स्थान पर कार्यभार ग्रहण करने की तिथि से संविदा में माना जावेगा, यदि संविदा पर नियुक्त कोई व्यक्ति बिना किसी विशिष्ट कारण और बिना किसी सूचना के अपने कर्तव्य से 01 माह से अधिक के लिए अनुपस्थित रहता है, तो उसकी संविदा नियुक्ति ऐसी अनुपस्थिति की तिथि से स्वतः समाप्त मानी जायेगी तथा उसकी कंडिका 9 में दर्शाई गई बाण्ड राशि राजसात हो जावेगी।”

*(Emphasis Supplied)*

15) The similar provisions contained in standing orders/rules became subject matter of consideration in catena of judgments. In *(1993) 3 SCC 259 (D.K. Yadav v. J.M.A. Industries Ltd.)*, after considering the relevant standing order which talks about automatic/deemed loss of lien, the Apex Court opined as under:-

“8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently

with the rules of natural justice. In *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405 : (1978) 2 SCR 272, 308-F] the Constitution Bench held that 'civil consequences' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. *Black's Law Dictionary*, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country ... they include ... rights capable of being enforced or redressed in a civil action.... In *State of Orissa v. (Miss) Binapani Dei* [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

15. In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days

and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice.”

*(Emphasis Supplied)*

16) The principle laid down in *DK Yadav (supra)* is consistently followed by Supreme Court in the cases as follows.

17) In (2002) 6 SCC 552 (*Lakshmi Precision Screws Ltd. v. Ram Bahagat*), the Apex Court held as under:-

“Having regard to the well-settled principle of law as in *Yadav [D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259 : 1993 SCC (L&S) 723]* the decision to terminate by reason of a presumption as noticed above, we cannot but lend concurrence to the conclusion of the High Court that the action is purely and surely arbitrary in nature. Arbitrariness is an antithesis to rule of law, equity, fair play and justice — contract of employment there may be but it cannot be devoid of the basic principles of the concept of justice. Justice-oriented approach as is the present trend in Indian jurisprudence shall have to read as an inbuilt requirement of the basic of concept of justice, to wit, the doctrine of natural justice, fairness, equality and rule of law. The letter dated 17th October cannot by any stretch be treated to be an opportunity since it is only on the fourth day that such a letter was sent — the action of the appellant herein stands out to be devoid of any justification, neither it depicts acceptability of the doctrine of natural justice or the concept of fairness — arbitrariness is writ large and we confirm the finding of the High Court as also that of the learned trial Judge and the Tribunal as regards the issue as noticed above.”

*(Emphasis Supplied)*

18) In (2006) 11 SCC 42 (*V.C., Banaras Hindu University v. Shrikant*), the Apex Court held as under:-



“52. The question came up for consideration before a three-Judge Bench decision of this Court in *D.K. Yadav v. J.M.A. Industries Ltd.* [(1993) 3 SCC 259 : 1993 SCC (L&S) 723] wherein emphasising the requirements to comply with the principles of natural justice while terminating the services of the employees on the touchstone of Article 21 of the Constitution of India; it was held that not only the procedure prescribed for depriving a person of his livelihood must meet the challenge of Article 14 but also the law which will be liable to be decided on the anvil thereof.

53. Here again, this Court opined that Article 14 requires that the procedure adopted must be just, fair and reasonable. It was furthermore held: (*D.K. Yadav case* [(1993) 3 SCC 259 : 1993 SCC (L&S) 723] , SCC p. 269, para 12”

(Emphasis Supplied)

19) In (2009) 5 SCC 567 (*Central Bank of India vs. Vijay Krishna Neema*), the Apex Court opined that:

“57. The matter may, however, be different in a case where despite having been given an opportunity of hearing, explanation regarding his unauthorised absence is not forthcoming or despite giving him an opportunity to join his duty, he fails to do so, as was the case in *Punjab & Sind Bank v. Sakattar Singh* [(2001) 1 SCC 214 : 2001 SCC (L&S) 209] .

20. Yet again in *U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh* [(2004) 4 SCC 268 : 2004 SCC (L&S) 637] , it was held as under: (SCC p. 280, paras 23-24)

“23. *D.K. Yadav* [(1993) 3 SCC 259 : 1993 SCC (L&S) 723] is an authority for the proposition that the principles of natural justice would have to be read in the standing orders. That was a case where there was a standing order similar to CSO L-2.12 except that 8 days' margin was granted within which the workman was required to return and satisfactorily explain the reasons for his absence or inability to return after the expiry of leave. This view was reiterated in the later decision of this Court in *Lakshmi Precision Screws Ltd. v. Ram Bahagat* [(2002) 6 SCC 552 : 2002 SCC (L&S) 926] where it was held that the element of natural justice was an inbuilt requirement of the standing orders.”

(Emphasis Supplied)

20) Reference may be made to *(2013) 4 SCC 301 (Nirmala J. Jhala vs. State of Gujarat)*, the Apex Court held as under:-

“Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (Vide *S.L. Kapoor v. Jagmohan* [(1980) 4 SCC 379 : AIR 1981 SC 136] , *D.K. Yadav v. J.M.A. Industries Ltd.* [(1993) 3 SCC 259 : 1993 SCC (L&S) 723] and *Mohd. Yunus Khan v. State of U.P.* [(2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180])”

*(Emphasis Supplied)*

21) The common string in these judgments is that principles of natural justice are inbuilt and needs be read into such provision like Clause 22 in the instant case.

22) The importance of principles of natural justice need not be emphasized. The Apex Court in *1990 2 SCC 746 (Neelima Misra Vs. Harinder Kaur Paintala)* held that any order which entails civil consequences should be passed only after following the principles of natural justice. The following quotes will establish the importance of following the principles of natural justice:-

*“Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law.”*

*“.....even God himself did not pass [a] sentence upon Adam before he was called upon to make his defence. Adam (says God), where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat? ....”*

*(Emphasis Supplied)*

The Apex Court in *Radhy Shyam v. State of U.P.*, reported in *(2011) 5 SCC 553* followed the principle laid down in *D.K. Yadav (supra)*.

23) The aforesaid analysis shows that learned Single Judge has

committed an error of law in dismissing the petition based on a reason which was not assigned in the impugned order (Annexure P/1). Even if the ground founded upon Clause 22 above is taken into account, deemed termination without following the principles of natural justice cannot be countenanced. Moreso, in a case of this nature where consistence stand of petitioner was that he made herculean efforts to join, but respondents deprived him to perform the duties. Thus, the impugned order of discontinuance/deemed termination cannot sustain judicial scrutiny. Resultantly, such termination order is set aside. The respondents shall reinstate the appellant within 30 days from the date of receipt of this order. This order will not come in the way of the respondents to take action against the appellant after following the principles of natural justice. If they intend to take any such action against the appellant, they may initiate the same within 60 days from today, failing which the right to proceed against the appellant shall stand abated. The question of back wages etc. will depend on the outcome of such action (if taken). In the event, no such action is taken within the time limit aforesaid, the respondents shall pay full back wages and other consequential benefits to the appellant as if his services were never terminated. The order of writ Court dated 10.02.2021 is set aside.

**24)** The writ appeal is allowed.

**(SUJOY PAUL)**  
**JUDGE**

**(ANIL VERMA)**  
**JUDGE**