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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8674 OF 2014

Jyoti w/o Vijay Giri,
Age : 50 years, Occ : Service,
R/o Dongarkada, Tq.Kalamnuri,
Dist.Hingoli.

....PETITIONER

-VERSUS-

- 1 The Zilla Parishad, Hingoli,
Through Chief Executive Officer,
Tq. & Dist.Hingoli.
- 2 The Deputy Chief Executive Officer,
The Zilla Parishad, Hingoli,
Tq. & Dist.Hingoli.

....RESPONDENTS

.....

Mr.M.V.Ghatge, Advocate for the Petitioner.
Mr.S.B.Pulkundwar, Advocate for Respondent Nos.1 & 2.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th July, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and by the consent of
the parties heard finally.

2 The issue raised in this petition is no longer res integra. The

Division Bench of this Court in *Smt. Vidya Vishnu Wanare v/s State of Maharashtra* reported in **2011(2) ALL MR 627**, has concluded that the Anganwadi Sevikas/ Anganwadi Madatnis, are workmen under Section 2(s) of the Industrial Disputes Act, 1947 and are employees under Section 3(5) of the MRTU & PULP Act, 1971. Relevant observations in paragraphs 4, 5, 6, 7, 8, 9 and 10 of the said judgment read as under:-

“4. Having heard learned Counsel for the petitioner and Ku. K.K. Pathak, appointed by this Court as 'Amicus Curiae', we find that Integrated Child Development Services Scheme (hereinafter referred to as "ICDS Scheme") was launched in the year 1975 with the following objectives and services to be given.

"OBJECTIVES :- The Integrated Child Development Services (ICDS) Scheme was launched in 1975 with the following objectives :

- i. to improve the nutritional and health status of children in the age-group 0-6 years;
- ii. to lay the foundation for proper psychological, physical and social development of the child;
- iii. to reduce the incidence of mortality, morbidity, malnutrition and school dropout;
- iv. to achieve effective co-ordination of policy and implementation amongst the various departments to promote child development; and
- v. to enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

SERVICES :- The above objectives are sought to be achieved through a package of services comprising:

- i. supplementary nutrition,
- ii. immunization,
- iii. health check-up,

- iv. referral services,
- v. pre-school non-formal education and
- vi. nutrition & health education.

Three of the six services namely Immunisation, Health Check-up and Referral Services delivered through Public Health Infrastructure under the Ministry of Health & Family Welfare."

5. *The constitution of ICDS Team is as under :*

"THE ICDS TEAM :- The ICDS team comprises the Anganwadi Workers, Anganwadi Helpers, Supervisors, Child Development Project Officers (CDPOs) and District Programme Officers (DPOs). Anganwadi Worker, a lady selected from the local community, is a community based frontline honorary worker of the ICDS Programme. She is also an agent of social change, mobilizing community support for better care of young children, girls and women. Besides, the medical officers, Auxiliary Nurse Midwife (ANM) and Accredited Social Health Activist (ASHA) form a team with the ICDS functionaries to achieve convergence of different services."

6. *The status of Anganwadi workers and helpers is as under :*

"STATUS OF ANGANWADI WORKERS AND HELPERS:-

Anganwadi Workers (AWWs) & Anganwadi Helpers (AWHs), being honorary workers, are paid a monthly honoraria as decided by the Government from time to time. Government of India has enhanced the honoraria of these Workers, w.e.f. 1.4.2008 by Rs.500 above the last honorarium drawn by Anganwadi Workers (AWWs) and by Rs.250 of the last honorarium drawn by Helpers of AWCs and Workers of Mini-AWCs. Prior to enhancement, AWWs were being paid a monthly honoraria ranging from Rs.938/- to Rs.1063/- per month depending on their educational qualifications and experience. Similarly,

AWHs were being paid monthly honoraria of Rs.500/- In addition to the honoraria paid by the Government of India, many States/UTs are also giving monetary incentives to these workers out of their own resources for additional functions assigned under other Schemes."

7. *Role and responsibilities of Anganwadi workers and helpers are as follows :*

"Role and responsibilities of AWWs

- i. *To elicit community support and participation in running the programme.*
- ii. *To weigh each child every month, record the weight graphically on the growth card, use referral card for referring cases of mothers/children to the sub-centres/PHC etc., and maintain child cards for children below 6 years and produce these cards before visiting medical and para-medical personnel.*
- iii. *To carry out a quick survey of all the families, especially mothers and children in those families in their respective area of work once in a year.*
- iv. *To organise non-formal pre-school activities in the anganwadi of children in the age group 3-6 years of age and to help in designing and making of toys and play equipment of indigenous origin for use in anganwadi.*
- v. *To organise supplementary nutrition feeding for children (0-6 years) and expectant and nursing mothers by planning the menu based on locally available food and local recipes.*
- vi. *To provide health and nutrition education and counseling on breastfeeding/Infant & young feeding practices to mothers. Anganwadi Workers, being close to the local community, can motivate married women to adopt family planning/birth control measures.*
- vii. *AWWs shall share the information relating to births*

that took place during the month with the Panchayat Secretary/Gram Sabha Sewak/ANM whoever has been notified as Registrar/Sub Registrar of Births & Deaths in her village.

- viii. To make home visits for educating parents to enable mothers to plan an effective role in the child's growth and development with special emphasis on new born child.*
- ix. To maintain files and records as prescribed.*
- x. To assist the PHC staff in the implementation of health component of the programme viz. immunisation, health check-up, ante natal and post natal check etc.*
- xi. To assist ANM in the administration of IFA and Vitamin A by keeping stock of the two medicines in the Centre without maintaining stock register as it would add to her administrative work which would effect her main functions under the scheme.*
- xii. To share information collected under ICDS Scheme with the ANM. However, ANM will not solely rely upon the information obtained from the records of AWW.*
- xiii. To bring to the notice of the Supervisors/CDPO any development in the village which requires their attention and intervention, particularly in regard to the work of the coordinating arrangements with different departments.*
- xiv. To maintain liaison with other institutions (Mahila Mandals) and involve lady school teachers and girls of the primary/middle schools in the village which have relevance to her functions.*
- xv. To guide Accredited Social Health Activists (ASHA) engaged under National Rural Health Mission in the delivery of health care services and maintenance of records under the ICDS Scheme.*
- xvi. To assist in implementation of Kishori Shakti Yojana*

(KSY) and motivate and educate the adolescent girls and their parents and community in general by organizing social awareness programmes/campaigns etc..

- xvii. *AWW would also assist in implementation of Nutrition Programme for Adolescent Girls (NPAG) as per the guidelines of the Scheme and maintain such record as prescribed under the NPAG.*
- xviii. *Anganwadi Worker can function as depot holder for RCH Kit/contraceptives and disposable delivery kits. However, actual distribution of delivery kits or administration of drugs, other than OTC (Over the Counter) drugs would actually be carried out by the ANM or ASHA as decided by the Ministry of Health & Family Welfare.*
- xix. *To identify the disability among children during her home visits and refer the case immediately to the nearest PHC or District Disability Rehabilitation Centre.*
- xx. *To support in organizing Pulse Polio Immunization (PPI) drives.*
- xxi. *To inform the ANM in case of emergency cases like diarrhoea, cholera etc.*

Role and responsibilities of Anganwadi Helpers

- (i) To cook and serve the food to children and marchers.*
- (ii) To clean the Anganwadi premises daily and fetching water.*
- (iii) Cleanliness of small children.*
- (iv) To bring small children collecting from the village to the Anganwadi."*

- “8. *Looking to the above functions of these Anganwadi Sevikas and workers, prescribed by the Government and the very scheme which is in vogue since 1975 and the activities under the said scheme, we are of the*

view that the Anganwadi Sevikas and Anganwadi helpers and in particular the present petitioner are 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 and the scheme under which they are performing their work, nature of which has already been given by us above is nothing but an 'industry' within the meaning of definition of 'industry' as per Section 2 (j) of the Industrial Disputes Act, 1947. We have no doubt that ICDS Scheme is systematic activity in which there is a cooperation between employer and employee. We also find that the said function under the ICDS Scheme does not fall within the meaning of the term 'sovereign function' as explained by the Hon'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board...Versus... A. Rajappa and others, reported in 1978 Supreme Court Cases (L & S) 215.

In the said decision in the case of Bangalore Water Supply and Sewerage Board (Supra) the case of State of Bombay...Versus...Hospital Mazdoor Sabha, AIR 1960 SC 610 : (1960) 1 LLJ 251 was considered. We have therefore no doubt that the petitioner is a 'workman' and the establishment in which she has been working under respondent No.2 - Zilla Parishad, namely, ICDS Scheme is an 'industry'.

9. In the case of State of Karnataka & Ors. Versus. Ameerbi & Ors., reported in 2006 (13) Scale 319, the Hon'ble Supreme Court has held that Anganwadi workers under the said ICDS Scheme are not the holders of any civil posts and it is in that background the Hon'ble Supreme Court held that the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 will not have jurisdiction to entertain application under the said Act. Thus, from this judgment, it is clear that the Administrative Tribunal has no jurisdiction to entertain application under Section 15 of the Administrative Tribunals Act for any relief.

10. We are aware that the State of Maharashtra has

established Labour and Industrial Courts in each District in the State, pursuant to its policy to reach the justice at the door steps of the litigants with the object of saving the expenditure of the poor litigants coming to the High Court directly. As earlier stated by us, honorarium received by Anganwadi workers or Anganwadi helpers is hardly ranging from Rs.1,000/- to Rs.1200/- and therefore, there is no reason why such poor workmen should rush to this Court instead of availing effective alternate remedy which is available more speedily under the provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971. We also would like to add that the pendency of the cases in the Labour and Industrial Courts in the State of Maharashtra and in particular in the areas other than Mumbai and Greater Mumbai has considerably reduced in the recent point of time and therefore, there is every hope of getting expeditious disposal of the cases. In view of the aforesaid alternate remedy and in view of the fact that the petitioner alike Anganwadi Sevikas and Anganwadi helpers get honorarium ranging from Rs.1,000/- to Rs.1200/- per month, we hold that the petitioner has a remedy to approach the Industrial Court in her District for implementation of the said Government Resolution dated 12.3.2008. We also hold that the remedy of approaching the Labour Court under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 in case of termination being available, this Court would not entertain the writ petition in its extraordinary jurisdiction particularly when the said effective alternate remedy is available.”

3 Relying on the ratio laid down by the Division Bench, this Court has concluded, in the matter of *Deputy Chief Executive Officer v/s Ratan Eknath Gund* reported at **2015(2) Mh.L.J. 616**, that the Anganwadi

Sevika or Madatnis cannot be terminated or dismissed from service by issuing a stigmatic order without conducting an enquiry merely by relying upon the Government Resolution dated 12.04.2007. Relevant observations in paragraphs 11 to 26 of this Court are as under:-

“11. *The Division Bench of this Court has dealt with a similar situation in the case of Smt.Mahananda W/o Anurath Bhosale (supra). Once again, the objectives of the ICDS Scheme were considered in the light of the order of termination issued to Smt.Mahananda, from paragraphs Nos.5 to 9. The Division Bench has considered the case of termination from all angles and has arrived at conclusions in the said paragraphs as under :-*

“05. A writ petition is not the proper remedy available for redressal of the petitioner's grievance, in view of the judgement of the Division Bench in the case of Vidya w/o Vishnu Vanare vs. State of Maharashtra, 2011 (2) Mh.L.J. 221. The Division Bench has held that an Anganwadi karykarti is a workman as defined under section 2(s) of the Industrial Disputes Act, 1947. However, we have heard this petition finally on merit, since rule has been issued in the year 2007. In our opinion, it would not be proper to relegate the petitioner to the remedy available under the Industrial Disputes Act, 1947 or Maharashtra Recognized Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU and PULP Act"), at this stage.

6. *The learned counsel for the petitioner has placed reliance on the judgement of the Madhya Pradesh High Court in the case of Shashi Prabha Trivedi vs. State of M.P 2001 (90) FLR 455, in support of his submission that an Anganwadi worker is entitled to the protection under Article 311(2) of the Constitution of India. The learned counsel further submitted that the services of the petitioner could not*

have been terminated without holding a departmental enquiry against her. He submitted that the petitioner had no opportunity to defend herself against the false allegations levelled against her and, therefore, there was a breach of the principles of natural justice.

07. We have perused the impugned order, and we are of the opinion that it deserves to be set aside. The impugned order indicates that it is a punitive in nature and, therefore, ought to have preceded by an enquiry.

08. The submission of Mr. Jadhvar, the learned counsel for the petitioner, is that the judgement of the Madhya Pradesh High Court in Shashi Prabha Trivedi (supra) wherein it has been held that the benefit of Article 311 (2) of the Constitution of India would be applicable to Anganwadi workers, is squarely applicable to the present case. With respect, we are unable to agree with the view of the Madhya Pradesh High Court in this regard. It is not possible to conclude that because the ICDS is a scheme run by the Central Government, the persons working for the scheme would be civil servants and that consequently their services can be terminated only in accordance with Article 311 of the Constitution. As we have already mentioned, the Division Bench of our High Court in the case of Vidya Vanare(supra) has held that the Anganwadi helper appointed in the ICDS, is a workman within the meaning of Section 2(s) of the Industrial Disputes Act. The Court has considered the duties and functions of the Anganwadi Sevikas and has held that the ICDS is a systematic activity in which there is co operation between the employer and the employee. It has relied on the decision of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others, 1978 SCC (L & S) 215 and held that the ICDS is not a sovereign function of the State and, therefore, is an industry within the meaning of Section 2(j) of the Industrial Disputes Act. . It has also held that in view of the decision of the Supreme Court in the case of

State of Karnataka & ors. vs. Ameerbi and ors. (2007) 11 SCC 681, the Anganwadi workers do not hold any civil post and, therefore, would not be governed by the Administrative Tribunals Act. Consequently, the submission of Mr. Jadhvar that such workers would be governed by Article 311 (2) of the Constitution of India, is without merit.

09. However, as we have already noted, there has been breach of the principles of natural justice and fairplay, which are the sine qua non to be observed while terminating the services of an employee. Admittedly, the employee i.e. the petitioner herein, has not been terminated for any other reason, but that which is mentioned in the impugned order dated 30.8.2005. It is apparent from the pleadings before us that although the order impugned appears to be innocuous, it has been issued as a consequence of the show cause notice and other letters issued to the petitioner, earlier. In fact, this is borne out from the affidavits filed in reply to the petition, on behalf of the Chief Executive Officer.

12. In the instant case, it is not in dispute that the termination meted out to the respondent was stigmatic and was on account of mis-conducts. It is also not in dispute that the petitioners are under a firm belief that the mis-conducts committed by the respondent have been proved and she deserves to be terminated from employment by virtue of Clause II of the Government Resolution dated 12/04/2007. The petitioners have, therefore, not shied away from this stand taken and continue to hold that the respondent is an employee, who does not deserve to be kept in employment on account of the mis-conducts committed and in view of the fact that the petitioners have lost confidence in her services.

13. Gist of the Government Resolution dated 12/04/2007 is as under :-

Clause 3(i) of the said Government Resolution

provides for issuance of a show cause notice to the concerned Anganwadi Karyakarti / Madatnis. Her explanation is to be taken into account while giving her an opportunity to improve her conduct.

By clause 3(ii) of the said Government Resolution, the said Anganwadi Karyakarti / Madatnis can be terminated forthwith. Apparently, there is no provision to conduct a domestic enquiry in the event any mis-conduct is alleged to be committed by the said employee.

14. *In the judgment of State Bank of Patiala (supra), cited by the petitioners, the Apex Court has evolved certain basic principles of natural justice keeping in view the concept of disciplinary enquiries and the orders of punishments to be imposed by employers upon delinquent and errant employees. While dealing with the same, the Apex Court has deduced certain conclusions as regards adherence to the principles of natural justice, allegations of violation of such principles, distinction between the opportunity of hearing and adequate opportunity of hearing etc.*
15. *The said principles, as laid down, are germane to the outcome of this case. I, therefore, find it appropriate to reproduce the said principles herein below :-*
 - “(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/ statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.*
 - (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.*
 - (3) In the case of violation of a procedural*

provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision

which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and "no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to

take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem].
 (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

16. In the light of the State Bank of Patiala and others (supra), Mr.Shelke, learned Advocate for the petitioners has vehemently contended that the present case of the respondent would fall under the concept of a 'fair hearing' given to her and opportunity to explain her conduct on the 'touch stone of prejudice'. He, therefore, submits that the first 2 aspects have been adequately complied with by the petitioners in light of clause 2 of the Government Resolution dated 12/04/2007. To the extent of the 3rd aspect, he submits that respondent was unable to explain away the charges levelled upon her, notwithstanding the fact

that specific clauses from any standing orders were not mentioned. He hastens to clarify that neither the Model Standing Orders are applicable to the case of the petitioners, nor can the respondent claim to be covered by the effect of Article 311 of the Constitution of India.

17. *It is, therefore, submitted that in these peculiar facts of the case, it only needs to be appreciated as to whether the petitioners had any intention to comply with the principles of natural justice and as to whether the petitioners desired to hear the respondent. According to him, the petitioners have complied with both of these requirements. He, therefore, submits that the mis-deeds committed by the respondent were proved in the sense that the conscience of the petitioners was satisfied in concluding that the respondent was guilty of the mis-deeds alleged against her.*

18. *I am unable to accept these submissions of the petitioners for reasons more than one. Once this Court has concluded in two judgments (by the Division Bench) that an “Anganwadi Sevika” and “Madatnis” is a workman and the ICDS Scheme is an Industry, unless the petitioners have their own Service Rules made applicable to such workmen, the Industrial Employment (Standing Orders) Act of 1946 and the Model Standing Orders framed thereunder would become automatically applicable. The preamble of the said Act reads thus :-*

“An Act require employers in industrial establishments formally to define conditions of employment under them.

WHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

The Statement of Objects and Reasons are that – Experience has shown that “Standing Orders” defining the conditions of recruitment, discharge,

disciplinary action, holidays, leave etc., go a long way towards minimising friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour conference revealed a consensus of opinion in favour of legislation. The Bill accordingly seeks to provide for the framing of "Standing Orders" in all industrial establishments employing one hundred or more workers.

In the first instance, the Act will apply to the categories of industrial establishments specified in clause (2)(e), which include, besides factories and railways, mines, quarries and oilfields, tramway or motor, omnibus services, docks, wharves and jetties, inland steam vessels, plantations and workshops. Government will be competent to extend the Act to other classes of industrial establishments or to grant exemptions where necessary, by notification.

Within six months from the date on which the Act becomes applicable to an industrial establishment, the employer is required to frame draft "Standing Orders" and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules. The Certifying Officer will be empowered to modify or add to the draft Standing Orders so as to render them certifiable under the Act. It will not be his function (nor of the Appellate Authority) to adjudicate upon their fairness or reasonableness. There will be a right of appeal against the decisions of the Certifying Officers."

19. Needless to state, a disciplinary proceeding, which is capable of culminating into an order of dismissal from service, thereby resulting in civil death of an employee, is an extremely serious aspect of service jurisprudence. Neither can charges be held to be proved by mere inference without there being any evidence on record, nor can the employer's conscience be said to be satisfied purely on the basis of calling an explanation from an employee. Holding statements of

villagers to her prejudice without an opportunity to contradict them, has resulted in a gross violation of principles of natural justice.

20. *I find that in the instant case, in light of the admissions given by the witness of the petitioners before the Labour Court, not a single statement of any complainant villager was shown to the respondent. Statements recorded by the witness were not supplied to her. Documents, which form the basis and the foundation of the report of the witness, were also not offered to her. The witness admitted that he was never appointed as an Enquiry Officer and has confessed that his report led to the termination of the services of the respondent. These are damaging features so far as the case of the petitioners, is concerned.*
21. *In the State Bank of Patiala judgment, an inquiry was conducted but not in a manner as is normally expected by Law. It was, therefore, concluded that a punishment inflicted upon an employee, pursuant to disciplinary / departmental inquiry in violation of Rules governing such inquiries, should not be set aside mechanically, unless the contentions of the employee are tested on the touch stone of prejudice.*
22. *In my view, the facts emerging from the State Bank of Patiala Judgment (supra), are distinguishable vis-a-vis, the case on hand. However, I am in respectful agreement with the principles laid down in the judgment as reproduced hereinabove. The case of the petitioners when tested in the backdrop of these principles, fails the test. I am, therefore, convinced that this petition, to the extent of the contention of the petitioners that a reasonable and fair opportunity of hearing was given to the respondent, must fail.*
23. *In the case of State Bank of India and others Vs. Ranjit Kumar Chakraborty and another, 2009 (12) FLR 608, the Apex Court has concluded that a major penalty cannot be imposed by the Disciplinary*

Authority, without following the due procedure of Law. The issue is no longer res-integra that charges levelled upon an employee, if ultimately lead to dismissal, ought to be proved by following the due procedure of Law.

24. *In the case of Amar Chakravarty and others Vs. Maruti Suzuki India Ltd., 2010 ALL SCR 2790, the Apex Court has re-iterated that an employee need not prove his innocence in a domestic inquiry. The employer, who levels charges against an employee is under an obligation to prove the said charges.*
25. *The petitioners have contended that full back wages granted to the respondent were unjustified. The petitioner is a State Instrumentality and cannot be equated with any public sector or private sector undertaking. Unless it is conclusively proved that the respondent had made a strenuous effort to seek employment and could not succeed in her efforts to gain employment, she would not be entitled to the back wages. In the absence of the same, the back wages ought not to be granted, is the contention.*
26. *The respondent has relied upon the judgment of the Apex Court in the case of Novartis India Ltd., Vs. State of West Bengal and others, AIR 2008 SC (supp) 836. In the said judgment, the concerned employee was transferred and had declined to join the place of transfer. The employer presumed abandonment of service. It was held that the presumption of abandonment of service rests upon the charge of unauthorized absenteeism and unless such a charge was proved in a proper domestic inquiry, the contention of the employer would be rendered unsustainable. Back wages were granted to the said employee in such circumstances.”*

4 It is, thus, settled law that the Integrated Child Development Services (ICDS) Scheme operated by the Zilla Parishad is an industry

under Section 2(j) of the Industrial Disputes Act, 1947. Any enquiry for misconduct alleged to have been committed by the Anganwadi Sevika will have to be done strictly in accordance with the Model Standing Orders until the Zilla Parishad frames its own rules.

5 Shri Pulkundwar, learned Advocate for Respondent Nos.1 and 2/ Zilla Parishad, has vehemently contended that no fault can be found with the impugned order of termination in the light of the following factors:-

- (a) The Petitioner cannot claim to have an unblemished service record.
- (b) She was issued with a show cause notice dated 27.01.2012.
- (c) Basic responsibilities cast on Anganwadi Sevika or Madatnis are explicitly set out in the Government Resolution as well as the ICDS Scheme.
- (d) Because of various incidents that occurred while performing duties, the Respondents followed the Government Resolution dated 05.08.2010 and issued notice to the Petitioner since the residents of the village submitted their complaints dated 22.03.2010 and 19.09.2013.

- (e) There was lot of resentment about the work and behaviour of the Petitioner.
- (f) The Petitioner has developed a habit of remaining unauthorizedly absent.
- (g) Several complaints have been received by the Respondents against the Petitioner.
- (h) Last opportunity to improve her conduct was given vide notice dated 01.08.2014.
- (i) The Bit Supervisor and the Project Officer have submitted their reports dated 24.07.2014 and 01.08.2014, which indicate that the Petitioner's performance has not improved.
- (j) The acts of mis-conduct / mis-demeanour are proved against the Petitioner by the reports submitted by the Project Officer and the Bit Supervisor.
- (k) The Petitioner shirks work and has a dismal record of working.
- (l) After giving her the last opportunity, she has rightly been terminated for the mis-demeanour on 13.08.2014.
- (m) An errant employee like the Petitioner cannot be

continued in employment.

(n) The petition be dismissed with costs.

6 It is apparent that the Respondent/ Employer is aggrieved by the purported acts of the Petitioner which are in the nature of misdemeanours. However, notwithstanding the gravity of the grievance that the Employer may have against an employee, the principles of natural justice cannot be disregarded only on account of the anxiety expressed by the Employer. Adherence to the principles of natural justice is a cardinal principle in dealing with the case of stigmatic removal. It cannot be disputed that the Petitioner has been terminated by passing a stigmatic order. Reports of the Project Officer and Bit Supervisor were never served on the Petitioner.

7 This Court in the case of the Deputy Chief Executive Officer (supra) has dealt with the law in relation to the service conditions of the Anganwadi Sevika and the principles of natural justice to be adhered to while giving a fair opportunity of hearing and a fair hearing to the Petitioner. The distinction between and effect of non observance of the procedural rights and the fundamental rights as has been considered in the case of *State Bank of Patiala v/s S.K.Sharma* reported in **AIR 1996 SC 1669** squarely applies to this case.

8 In the light of the fact situation and the law crystallized, I am inclined to follow the same view taken by this Court in the Deputy Chief Executive Officer (supra).

10 As such, this petition is partly allowed. The impugned order of termination dated 13.08.2014 is quashed and set aside. Consequentially, the order of the Appellate Authority dated 30.09.2014 is also quashed and set aside.

11 Since I am inclined to follow the view taken by this Court in the case of Deputy Chief Executive Officer (supra), the reliefs granted in the said case are being reproduced hereunder:-

“29. *It is clear that the petitioners had not conducted a domestic inquiry as is required by Law. It was never comprehended by the petitioners that it was required to conduct a domestic inquiry as per the Model Standing Order in light of the conclusions drawn by the Division Bench of this Court in the above referred 2 judgments i.e. in the case of Sau Vidya Wanare and Mahananda Bhosale (supra). However, the respondent has been terminated for committing misconducts.*

30. *In my view, for such ignorance on the part of the petitioners, it would be unusual to prevent the petitioners from not proceeding in accordance with Law against the respondent in the facts of this case. The petitioners have lost confidence in the*

Respondent. I am, therefore, of the view that the petitioners should be given an opportunity, to issue a charge sheet in accordance with the Model Standing Orders against the respondent and proceed to conduct a domestic inquiry in accordance with the procedure laid down thereunder within a period of two months from today.

31. *The issue of “doctrine of relation back”, in my view, will have its application in the facts of this case. If the petitioners conduct a domestic inquiry against the respondent, the ultimate result of proving the charges shall be related back to the date of termination of the respondent. The amount awarded to the respondent, is to reduce the rigours of unemployment and litigation as she cannot be faulted for the incorrect procedure adopted by the petitioners.*
32. *In the event, the charges are held to be proved, the respondent shall have her own rights as against the petitioners. The petitioners shall be precluded from recovering this amount from the respondent. Needless to state, in the event the charges are not proved against the respondent, she shall stand to gain all service benefits, as are available in Law.*
33. *With these observations, till the employer petitioners complete the enquiry as per the Model Standing Orders, there shall be no reinstatement for the Respondent. However, it is clarified that if within two months, the petitioners do not initiate the domestic enquiry, it shall be concluded that they have acquiesced their right to conduct such an enquiry and the respondent shall then be entitled to reinstatement with continuity of service.*
34. *In the light of the above, the writ petition is partly allowed to the extent of depriving the respondent of 60% of the back wages and permit the petitioner to conduct an enquiry as per the Model Standing Orders. The petitioners shall refrain from delaying the completion of the enquiry. They shall endeavour to*

complete the same within three months from the date of receipt of her explanation to the charge sheet.”

12 As such, the Petitioner herein shall be reinstated with continuity of service and 60% back-wages.

13 The Respondent Nos.1 and 2 are permitted to follow the Model Standing Orders and conduct a domestic enquiry against the Petitioner for proving the charges. They shall endeavour to complete the said enquiry within THREE MONTHS after the issuance of the charge sheet to the Petitioner, from the date of her explanation.

14 In the event the enquiry is not completed in three months, the procedure as laid down in the Model Standing Orders shall be followed. The Petitioner shall be precluded from delaying the completion of enquiry.

15 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)