ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD IST MARCH,2000

BEFORE
THE HON'BLE M.KATJU, J.
THE HON'BLE D.R. CHAUDHARY, J.

Civil Misc. Writ Petition No. 18194 of 1988

V.K. Bahadur ...Petitioner
Versus
State Bank of India, Lucknow Circle and another ...Respondents

Counsel for the Petitioner:
Sri M.C. Misra

Counsel for the Respondents:
Sri S.N. Verma

Constitution of India, Article 226- Ambit and Scope- Grave misconduct-of-Bank employee proved removal -Extra ordinary write jurisdiction under Article 226, held, cannot be exercised.
Held (Para 12)
It was found that the lapses on the part of the petitioner were deliberate acts of commission and ommission. Issuing a draft without corresponding debits, concealing the fact by writing 'cancelled by me' in respect of the draft from used to issue the said draft, granting undue accommodation and unfair gain to the borrower and manipulating accounts of the Bank's customers, deliberately withholding Demand Draft for large amounts for long periods, negotiating a cheque without keeping sufficient balance in the Account-all these and other imputations were found proved in the enquiry and they show lack of integrity, honesty and devotion on the part of the petitioner in discharging his duty and it was highly pre-judicial to the interest of the Bank. This Court cannot interfere with findings of fact recorded by the enquiry officer, under Article 226 of the Constitution.

Case Law referred:
W.P. No. 21054 of 1998 decided on 28.2.2000
1996 (9) S.C.C. 69
1997 ACJ 896
1997 (3) J.T. 385

By the Court

1. This writ petition has been filed against the impugned order of removal dated 10.4.87 Annexure 23 to the writ petition.

2. We have heard learned counsel for the parties. The petitioner was appointed as Probationary Officer in the State Bank of India by order dated 11.11.71 vide Annexure-1 to the petition. After completing two years of probation he was posted as a regular officer at the Johnstonganj Branch of the Bank at Allahabad. Thereafter he was transferred to various branches. While he was posted at the Railway Colony Branch at Gorakhpur in 1983 he was placed under suspension by order dated 25.1.84 was served on him vide Aannexure-2 to the petition. Subsequently a charge-sheet dated 25.1.84 was served on him vide Annexure-3 to the petition. The petitioner wrote certain letters asking for inspection of certain documents. True copies of these letters are Annexure-3 to 6 to the petition. He received a reply vide Annexure-7 to the petition stating that inspection could not be given for want of specification and relevance vide Annexure-7 to the petition. He was asked to submit a list of documents and the relevancy thereof within seven days. Thereafter a supplementary charge-sheet dated 4.4.84 was served on him vide Annexure-8 to the petition. He again wrote on 30.4.84 demanding copies of certain documents and inspections thereof vide Annexure-9 to the petition. A reply dated 25.5.84 was sent to him again asking for specification and relevancy vide Annexure-10 to the petition. He received another letter dated 9.7.84 asking him to submit a list of documents which he wanted to peruse. The petitioner gave a list of documents for inspection vide Annexure-12 to the petition. He received a letter from the Bank directing him to make inspection of the documents at the Churk Branch of the Bank in district Mirzapur vide Annexure-13 to the petition. It is alleged in paragraph 14 of the petition that

the petitioner was ill and hence he sent a letter and telegram requesting for adjournment of the date of inspection of the documents vide Annexure-14 and 15 to the petition. It is alleged in paragraph 15 that no date was fixed for inspection and instead he received a letter dated 17.5.85 asking him to be present alongwith his representative in the enquiry on 3.6.85 vide Annexure-16 to the petition. On 3.6.85 certain proceedings were held vide Annexure-17 to the petition and on 20.8.85 inspection of some of the documents was given. True copy of the certificate of inspection is Annexure-18 to the petition.

3. It is alleged in paragraph 19 of the petition that 2.11.85 was fixed for examining the relevance of the defence documents but unfortunately the petitioner fell ill and hence he requested for fixing some other date. A copy of his letter is Annexure-19 to the petition. In paragraph 20 of the writ petition it is alleged that the Enquiry Officer instead of postponing the date proceeded exparte. In paragraph 21 of the petition it is stated that only certain documents were permitted to be inspected which were perused between 26.12.85 to 30.12.85 but inspection of all the documents was not allowed. In paragraph 22 of the petition it is alleged that without giving opportunity of cross examination and producing defence documents and defence evidence the Enquiry Officer submitted a report to the Disciplinary Authority. Thereafter the impugned removal order vide Annexure-20 was passed. In paragraph 24 of the petition it is stated that the Disciplinary Authority did not furnish a copy of the enquiry report before passing the final order but supplied it with the removal order.

4. The petitioner filed an appeal vide Annexure-21 and supplementary appeal vide Annexure-22 to the petition. However, the same was dismissed vide Annexure-23 to the petition. Aggrieved this writ petition has been filed.

5. The petitioner has alleged in paragraph 31 of the petition that he was not given personal hearing before the appellate authority. In paragraph 32 of the petition it is alleged that no case was established against the petitioner, and the only finding recorded is lack of supervision on some occasions and this could not form the basis of imposing a major penalty. It is also alleged that the Chief Manager was not the appointing authority of the petitioner and hence he could not pass the removal order. In paragraph 34 of the petition it is stated that the Disciplinary Authority denied opportunity of hearing to the petitioner, since copy of documents were not made available nor inspection given in respect of a large number of documents.

6. The Bank has filed a counter affidavit. In paragraph 5 of the same it is stated that the petitioner was placed under suspension for certain acts of misconduct of a serious nature committed by him when he was Branch Manager of the Churk Branch in district Mirzapur. In paragraph 7 is stated that a detailed investigation was carried out and after being prima facie satisfied of serious lapses by the petitioner the disciplinary authority ordered initiation of departmental proceedings and hence a charge sheet dated 25.1.84 was served on the petitioner.

7. In paragraph 8 of the same it is stated that it was open to the petitioner at all relevant time to ask for inspection of relevant documents and copies of the same. In fact in the course of the enquiry whenever relevant documents were asked for and were relied upon by the petitioner they were duly shown to the petitioner. In the chargesheet the petitioner was required to submit his defence within ten days but no reply was submitted. The demand of the petitioner for perusal of documents without indicating the relevance thereof was not accepted. He was however, asked by letter dated 16.4.84 Annexure-7 to the petition to submit list of specific documents indicating therein the relevancy. In

paragraph 9 of the counter affidavit it is alleged that after submission of the first chargesheet fresh lapses of a gross nature committed by the petitioner came to light, which warranted issuance of a supplementary chargesheet. The Enquiry Officer during the enquiry proceedings duly provided inspection of relevant documents. In paragraph 13 and 14 of the counter affidavit it is stated that the petitioner was given full opportunity to inspect the relevant documents. The enquiry officer held a preliminary hearing on 3.6.85 which was attended by the petitioner and he agreed to the time schedule as laid down by the Enquiry Officer as is evident from Annexure-17 to the petition. In paragraph 14 of the counter affidavit it is stated that the petitioner inspected the relevant documents as is evident from the minutes of the proceedings of 26.5.1986. In paragraph 15 of the same it is stated that the list of documents dated 7.9.85 sought to be relied upon by the petitioner was submitted before the enquiry officer who objected that the list was vague and ambiguous and does not disclose the relevancy of the evidence, hence the petitioner was directed to submit a fresh list with reference to the charges levelled against him and showing the relevancy. Since in the meantime the enquiry officer has also received a request for adjournment the proceedings were adjourned with a note of warning that in future medical certificate of a private Doctor shall not be accepted unless countersigned by the Chief Medical Officer. Copy of the proceedings of 2.11.85 is Annexure-CA-1. In paragraph 17 of the counter affidavit it is stated that the proceedings dated 10.2.86 were adjourned on the request of the learned counsel for the petitioner to 4.3.86. However, it was again adjourned to 10.4.86 on the request of the defence counsel but it was made clear that this adjournment was being granted in a very special case. However, on 10.4.86 neither the petitioner nor his defence counsel appeared to participate in the enquiry proceedings. Still in order to give the petitioner a fair chance the enquiry proceedings were adjourned for the last time to 7.5.86. Copy of the proceedings are Annexure-CA-3,4 and 5 to the counter affidavit. The petitioner was thus given ample opportunity of defence. Copy of the enquiry proceedings of further dates are Annexures CA-6, 7, 8 and 9 to the affidavit. In paragraph 21 of the counter affidavit it is stated that the appellate authority carefully considered the grounds of appeal and found no ground warranting interference with the removal order. True copy of the minutes of the meeting of 7.6.88 is Annexure-CA-11 to the affidavit. In paragraph 24 of the counter affidavit it is stated that on the date the disciplinary action was taken against the petitioner he was serving in a circle, hence as per the State Bank of India Regulations the appointing authority for the petitioner and other similarly placed officers was the Chief General Manager. In paragraph 26 of the counter affidavit it is stated that the imputations found proved against the petitioner showed lack of integrity, and devotion on the part of the petitioner and his acts were highly prejudicial to the Bank's interests and hence the punishment was justified. We are of the opinion that no ground for interference with the punishment awarded to the petitioner is made out.

8. Learned counsel for the petitioner only argued on the quantum of punishment and he urged that the punishment was disproportionate to the offence. We are not inclined to agree with this submission. The allegations found proved against the petitioner are of a very serious nature involving financial irregularities. A Bank runs on public confidence and if public confidence is impaired by the lack of integrity of an employee the interest of the Bank will suffer. There is no scope of leniency in such cases as held by us in **Civil Misc. Writ Petition No.21054 of 1998 (Ram Pratap Sonkar vs. Chairman & Managing Director, Allahabad Bank, Calcutta and others) decided on 28.02.2000.**

9. In the aforesaid decision we have referred to the various decisions of the Supreme Court on this point and it is not necessary for us to again refer to the same. Learned counsel for the petitioner referred to certain observations in the impugned removal order dated 10.4.87 and submitted that it has been observed therein that there was no malafide intention of the petitioner and there was no personal gain in issuing the Bank drafts. He submitted that the finding is only that the petitioner was highly negligent on certain occasions.

10. A perusal of the impugned removal order dated 10.4.87 however, shows that grave charges of financial irregularities have been proved against the petitioner e.g. the enquiry officer has found that imputation no.(I) to the effect that the petitioner issued a draft without corresponding debit was found proved. It was also proved that the remarks 'Cancelled by me' made by him in the draft issue Register was intended to be in respect of the impugned draft no.189233. Similarly, imputation no.(ii) to the effect that bills were paid by debit to charges account was found proved. Imputation no.(iv) that the petitioner was negligent in debiting arbitrarily the account of the U.P. State Cement Corporation Ltd. with the amount of interest on the term loan granted to Sri R.K. Malviya was also found proved. Similarly, the Imputation no.(ix) and (xi) were partly proved.

11. As regards the supplementary chargesheet it was found that the petitioner was highly negligent in discharging his duties on certain occasions and thereby acted in a manner which was pre-judicial to the Bank. As regards Imputation no.(iv) it was found that with a view to provide undue accommodation to the borrower the petitioner arbitrarily debited to the Term Loan Account and the interest was arbitrarily debited to the Cash Credit Account of Churk Cement Factory of U.P. State Cement Corporation Ltd. and was credited to the Term Loan Account.

12. As regards Imputation (v) it has been found that undue accommodation was granted to one R.K. Malviya. It was found that the lapses on the part of the petitioner were deliberate acts of commission and omission. Issuing a draft without corresponding debits, concealing the fact by writing 'Cancelled by me' in respect of the draft form used to issue the said draft, granting undue accommodation and unfair gain to the borrower and manipulating accounts of the Bank's customers, deliberately withholding Demand Draft for large amounts for long periods, negotiating a cheque without keeping sufficient balance in the Account all these and other imputations were found proved in the enquiry and they show lack of integrity, honesty and devotion on the part of the petitioner in discharging his duty and it was highly pre-judicial to the interest of the Bank. This Court cannot interfere with findings of fact recorded by the enquiry officer under Article 226 of the Constitution.

13. Thus the submission of learned counsel for the petitioner that there was no malafide intention on the part of the petitioner and there was no personal gain is not tenable. Learned counsel for the petitioner has referred only to the concluding part of the findings, but it is settled law that a document has to be read as a whole, and stray observations on a document or order cannot be read in isolation. As already stated by us above, a Bank runs on public confidence and no leniency can be shown where allegations of lack of integrity or devotion to duty are found proved against a Bank employee. In this respect greater integrity and devotion to duty is required from Bank employees as compared to employees of other organisation. Any leniency shown in such matters would be wholly uncalled for and misplaced, vide Disciplinary Authority v. N.B. Patnaik, 1996(9) S.C.C. 69.

14. In Ram Pratap Sonker's case (supra) this Court has distinguished the decisions of the Supreme Court in Kailash Nath Gupta vs. Enquiry Officer, 1997ACJ 896 and in State Bank of India vs T.J. Paul, 1999(3) JT 385. In fact in State Bank of India vs. T.J. Paul (supra) the Supreme Court held that in the case of a Bank employee even if there was no actual loss to the Bank the employee can yet be held guilty of major misconduct.

15. Thus this is not a fit case under Article 226 of the Constitution of India. The petition is dismissed.

Petition dismissed.

REVISIONAL JUDRISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 7.3.2000

BEFORE
THE HON'BLE B.K. RATHI, J.

Criminal Revision no. 263 of 1998

Rajendra Kumar ... Revisionist
Versus
State of U.P. and another ... Opp. Parties.

Counsel for the Revisionists:
Shri Dharmendra Singhal

Counsel for the Opposite parties:
A.G.A.
Shri S.U. Khan

Negotiable Instruments Act, Ss. 142 (a) and 141 r/w Cr.P.C. S.200- Complaint under- By holder of cheque who is proprietor of the firm as well as by another person without recording complainants' Statement under s.200 Cr.P.C.-Maintainability.

Held(Para 5,6 and 7)

Admittedly the cheque is in the name of the Firm of which Smt. Manorama Devi is the sole proprietor. Therefore she is holder in due course of the cheque. However, the complaint has been filed by her as well as her husband Pramod Kumar Varshney. Therefore, Pramod Kumar Varshney is an unnecessary party and has been unnecessarily impleaded as complainant. The complaint can be filed only by payee or the holder of the cheque in due coruse as provided by Section 142 (a) of the Act. The complaint, therefore, cannot be said to be filed by an unauthorised person as Smt. Manorama Devi is also one of the complainant, who is holder of the cheque in due course. However Pramod Kumar Varshney has been unnecessarily impleaded as complainant, but the complaint can not be rejected on this ground.

It is mandatory with the statement of the complaint should be recorded in the complainant cases u/s 200 Cr.P.C. Therefore, the procedure adopted by the learned III Additional Chief Judicial Magistrate, Aligarh is illegal and the summoning order is fit to be set aside. However, for this reason the complaint cannot be dismissed as Smt. Manorama Devi is also the complainant. The trial court should record the statement of Smt. Manorama Devi under Section 200 Cr.P.C. and thereafter, he may proceed with the case in accordance with law.
It is a proprietary Firm of Smt. Manorama Devi and therefore, she is authorised to file a complaint on behalf of the Firm.

By the Court

1. In Criminal Revision No. 263 of 1998 the request has been made to set aside the order dated 25.9.98 passed in Criminal Revision No. 172 of 1998 by the Special Judge/Additional Sessions Judge, Aligarh. In Criminal Misc. Application No. 1515 of 2000 the request has been made that III Additional Chief Judicial magistrate, Aligarh be directed to decide Case No. 1464 of 1996 pending before him, expeditiously. Both the matters are relating to the same offence and therefore they are being disposed of by a common judgment.

2. I have heard Sri Dharmendra Singhal, learned counsel for the revisionist in Criminal revision No. 263 of 1998 and Sri S.U. Khan, learned counsel for the Opposite Parties and also S.U. Khan, learned counsel for the petitioners in Criminal Misc. Application No.

1515 of 2000 Sri Dharmendra Singhal, Learned counsel for the opposite parties.

3. The facts giving rise to these cases are that opposite party no.2 Pramod Kumar Varsheny and his wife Smt. Manorama Devi filed Complaint Case No. 1464 of 1996 U/S 138 Negotiable Instruments Act against revisionist Rajendra Kumar, which is pending in the court of III Additional Chief Judicial Magistrate, Aligarh. Revisionist Rajendra Kumar appeared in that case and filed objections that there is no sufficient ground to proceed against him. Objections were allowed by the III Additional Chief Judicial magistrate, Aligarh by an order dated 27,1,98 and he cancelled the summoning order of the revisionist. Against that order, opposite party no.2 and his wife preferred Criminal Revision No.263 of 1998. The complainants have alleged. That opposite party no. 2 is delaying the disposal of the case and therefore they filed Criminal Misc. Application No. 1515 of 2000 for early disposal of the said case.

4. According to the complaint, there is a Firm M/S Pyarey Lal Har Ballabh Das of which Smt. Manorama Devi wife of Pramod Kumar is the sole Proprietor. The complainants are Smt. Manorama Devi and Pramod Kumar Varshney and it is alleged that Pramod Kumar Varshney is the Manager of the Firm. That an account payee cheque dated 12.8.96 for Rs.8,02634.09 was given by the revisionist, which was dishonoured by the Bank on 16.8.96. That therefore, the complainants served legal notice dated 27.8.96, which was received by the accused, that he did not pay the amount.

5. Three contentions have been raised before me in this revision by Sri Dharmendra Singhal, learned counsel for the revisionist. The first contention is that the complaint has not been filed by an authorised person. Admittedly the cheque is nin the name of the Firm of which Smt. Manorama Devi is the sole Proprietor. Therefore she is holder in due course of the cheque. However, the complaint has been filed by her as well as her husband Pramod Kumar Varshney. Therefore, Pramod Kumar Varshney is an unnecessary party and has been unnecessarily impleaded as complainant. The complaint can be filed only by payee or the holder of the cheque in due course as provided by Section 142(a) of the Act. The complaint, therefore, cannot be said to be filed by an unauthorised person as Smt. Manorama Devi is also one of the complainant, who is holder of the cheque in due course. However, Pramod Kumar Varshney has been unnecessarily impleaded as complainant, but the complaint can not be rejected on this ground.

6. In this connection it is also contended that on behalf of the revisionist that statement of the complainant u/s 200 Cr.P.C. should have been recorded, but no statement of Smt. Manorama Devi has been recorded. That the statement of her husband has been recorded and is basis the revisionist has been summoned. I have considered the arguments. It is mandatory the statement of the complainant should be recorded in the complaint case u/s 200 Cr.P.C. Pramod Kumar Varshney cannot be deeded to be the complainant and his statement u/s 200 Cr.P.C. could not be recorded. Therefore, the procedure adopted by the learned III Additional Chief Judicial magistrate, Aligarh is illegal and the summoning order is fit to be set aside. However, for this reason the complaint cannot be dismissed as Smt. Manorama Devi is also the complainant. The trial court should record the statement of Smt. Manorama Devi under Section 200 Cr.P.C. and thereafter, he may proceed with the case in accordance with law.

7. The next contention of the learned counsel for the revisionist is that the complainant is a sole proprietor of the Firm and the complaint has not been filed in accordance with the provisions of Section 141 of the Negotiable Instruments Act. This

contention is without merit. It is a proprietary Firm of Smt. Manorama Devi and therefore, she is authorised to file a complaint on behalf of the Firm.

8. The last contention of the learned counsel for the revisionist is that the date of service of notice has not been mentioned in the complaint. Only it is mentioned that the notice was sent through counsel on 27.8.96. Which as been received by the opposite parties. it is contended that the date of receipt of notice should be mentioned in the complaint. Learned counsel for the revisionist has drawn my attention to the provisions of Section 142 of the Negotiable Instruments Act. Clause (b) provides that the complaint can be made within one month of the date on which the cause of action under Clause(c) of the proviso of Section 138. Clause (c) of the proviso of Section 138 provides that in case the drawer of the such cheque fails to make the payment of the said amount of money to the payee within 15 days of the receipt of the notice only, then the offence u/s 138 of the Negotiable Instruments Act is made out. Therefore, the offence u/s 138 of the Negotiable Instruments Act is complete, if the amount of cheque is not paid within fifteen days of the receipt of the notice, and not by the dishonour of the cheque. It is, therefore, contended that without service of the notice, the offence is not complete and the limitation for filing the complaint is one month from the date of service of the notice, under Clause (b) of Section 142 N.I. Act. No date of service of notice is a necessary ingredient of the complaint, show that the same has been filed within he prescribed time, therefore, the complaint is liable to be rejected.

I have considered the arguments and is of the view that the same cannot be accepted. Criminal Procedure Code does not prescribed any from of the complaint though in regard schedule other proformas have been given. It is no where prescribed that the date of cause of action should be mentioned in the complaint to mention the date of service of the notice. The accused may plead that the complaint is barred by time and therefore, the same is liable to be dismissed and may show that the notice was not served on him or the complaint was not filed within one month of the date of service of notice, that the notice was not sent within 15 days of the receipt of information by complainant from the bank regarding return of the cheque as unpaid. If the accused plead any of these facts, then it will be question of fact to be decided by the trial court after the evidence.

In view of the above, it is not mandatory to mention in the complaint the date of service of the notice. The complaint cannot be rejected on this ground as well.

In Criminal Misc. Application No. 1515 of 2000 the only prayer is that the trial court be directed to dispose of the above case expeditiously. The aggrieved person is entitled to the expeditions disposal of his grievance. The case is also very old. Therefore, this petition is fit to be allowed.

Accordingly, Criminal Revision No. 263 of 1998 is allowed in part and the order of the revisional court dated 25.9.98 passed in Criminal Revision 172 of 1998 is set aside. However, the summoning order of the accused is also quashed. The trial court shall record the statement of the complainant Smt. Manorama Devi u/s 200 Cr.P.C. and it consider proper also record evidence u/s 202 Cr.P.C. and thereafter shall proceed with the case afresh in accordance with law. However, the case shall be decided expeditiously.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD APRIL 3, 2000

BEFORE
THE HON'BLE M. KATJU, J.
THE HON'BLE D.R. CHAUDHARY, J.

Civil Misc. Writ Petition No. 2893 of 2000

Gobardhan Lal ...Petitioner.
Versus
State of U.P. & Others ...Opposite party

Counsel for the Petitioner:
Shri Gaurai Kumar Srivastava

Counsel for the Respondent:
S.C.

Article 226 of the Constitution of India- Guidelines about transfer of the Govt. Servants issued- frequent transfer of Govt. servant is bad for the moral of the service and is a burden on the Public exchequer representations should be made before the Chief Secretary who is mature and senior enough with stand political and other extranuous pressure.
(Held para 12)
Citizens have a fundamental right to good governance and this right to have good governance is part of Article 21 of the Constitution. Article 21 has been interpreted by the Supreme Court in several decisions to mean that the citizens have a right to a dignified and civilized life, and not merely an animal life. Unless the citizens get good governance it is not possible for them to have a dignified and civilized life. In our opinion good governance is only possible if the government servants are politically neutral and are not transferred or otherwise victimized at the instance of any political party or politicians.

By the Court

1. This writ petition has been filed against the impugned transfer order dated 8.12.99 copy of which is Annexure 1 to the petition. By that order the petitioner who was District Supply Officer, Meerut was transferred to the headquarter at Lucknow.

2. In this case on 19.1.2000 we passed the following interim order:

"Heard learned counsel for the petitioner and the learned Chief Standing counsel.

The petitioner has challenged the transfer order dated 8.12.99, Annexure-1 to the writ petition. The petitioner is District Supply Officer, Meerut. By the impugned transfer order, he has been transferred from Meerut to the Headquarter at Lucknow. Annexure-2 is copy of the letter dated 1.12.99 sent by a local M.L.A. Sri Atul Kumar to the Minister of Food and Civil Supply, Government of U.P. in which it has been written that the petitioner does not give importance to M.L.As and he is lodging false cases against businessmen, and therefore, he should be immediately removed from Meerut and one Sri Mohan Singh should be posted as District Sup[ply Officer, Meerut since Sri Singh's functioning is in accordance with the policy of the B.J.P. However, the District Magistrate Meerut, in his letter dated 10.12.99 as written to the Secretary, Food and Civil Supply Department, U.P. that the petitioner is doing good work and he has greatly improved the functioning of the officer the District Supply Officer and there is no complaint against him. Thereafter, the petitioner was transferred by the impugned order.

We are prima facie of the opinion that the petitioner's transfer was because of the aforesaid letter of the MLA.

A large number of petitions are coming up before this Court challenging transfer orders of government servants at the behest of politicians. We are distressed to note that over the last few decades there has been continuous politicalisation of the bureaucracy, and harassment of the government servants due to political interference. Under the Constitutional Scheme relating to government

servants, as implicit in part XIV of the constitution, the government servants should be politically neutral in discharging their duties. No double the Government may formulate policies and it is the undoubted duty of government servants to faithfully implement these policies (provided they are not illegal or unconstitutional even if the government servants disagree with the said policies, but the government servants should not be politically allied with any party. Under the British pattern of administration which we have adopted under our Constitution it is implicit that while the Minister can lay down the policy (which has to be implement by the government servants) there should not be day to day interference with the routine matters of the department by the Minister. In particular, transfers and postings of government servants is in the discretion of the Senior Officer of the concerned department, who has to pass such orders on administrative grounds only and not for political, caste, monetary or other extraneous consideration. It is regrettable that over several decades there has been undue political interference in the bureaucracy due to which standards and independence of the bureaucracy have been adversely affected. Frequent transfers in fact demoralize the working of the government servants, besides imposing an extra financial burden on the depleted State exchequer.

We are deeply distressed to know from media reports (in T.V. and newspaper) that transfers will now be made on the recommendation of the local unit of the ruling party. This is wholly unconstitutional.

The time has therefore now come to lay down proper guidelines by the Court in this connection. We propose to do so in this case.

However, before doing so we grant the learned Chief standing counsel three weeks time to file a counter affidavit List as part-heard before us on 14.2.2000, on which date the Chief Secretary himself shall file a personal affidavit and shall explain in detail as to what is the policy and objective criteria of the Government regarding transfers and postings of government servants and what instructions have been issued by him in this connection to ensure that there is no undue political interference in the bureaucracy and in the transfers and postings of government servants.

On that date the Chief Secretary, U.P. must either himself appear before us or nominate a senior officer (not below the rank of Secretary to the U.P. Government) for this purpose.

Until further orders, the operation of the impugned transfer order dated 8.12.99 shall remain stayed. Learned Standing Counsel will communicate copy of this order to the Chief Secretary, U.P. Govt."

3. The facts of the case are mentioned in the above order and hence it is not necessary to repeat the same. However, we are reiterating the general principles mentioned in the above order.

4. A counter affidavit has been filed by the Chief Secretary of the U.P. Govt. In Annexure CA-1 of the same the policy regarding transfer has been mentioned. Annexure CA-2 is a copy of the order of the State Govt. dated 23.12.98, directing all staff to follow the aforesaid policy.

5. A counter affidavit has also been filed by Sri Prabhat Chandra Chaturvedi, Secretary Food and Civil Supplies, U.P. Lucknow. In Para 5 of the same it has been stated that the alleged letter of the MLA dated 1.10.99 Annexure 2 to the writ petition was never written by the said MLA Shri Atul Kumar and is a forged letter and Shir Atul Kumar has informed the Deputy Secretary, Food and Civil Supplies about this by the letter dated 1.2.2000. In Para 6 of the counter affidavit it is stated that the letters dated 1.12.1999 and 19.12.1999 have been issued by a fictious

person, and respondent no. 5 Atul Kumar has not signed the same. In para 7, it is stated that the petitioner was suspended on 10.2.97 for alleged serious irregularities and misconduct but was reinstated though departmental enquiries are still pending. In para 8 it is stated that the petitioner while posted as District Supply Officer, Hamirpur committed serious irregularities and was suspended on 15.12.97 but was reinstated on 20.3.99, although the departmental proceedings are still continuing against him. In Para 11 of the counter affidavit is stated that the petitioner is real brother of MLA Shri Ram Pal Verma and hence to get the transfer order cancelled he put pressure from several political sources. Photostat copies of some letters are Annexure C-4. In para 13 of the counter affidavit it is stated that certain enquiries are going on against the petitioner and hence in the public interest it was decided to attach him to the head office at Lucknow. In para 19 of the counter affidavit it is stated that the transfer order was not issued on political pressure.

6. In view of the conflicting statements in the affidavits it is not possible for us to decide the disputed questions of fact in writ jurisdiction as to whether the transfer order was passed due to political pressure or not. However, we wish to lay down some general principles regarding transfers and postings of government servants in this case, as observed by us in our order dated 19.1.2000.

7. This is necessary because a large number of petitions are being filed in this Court challenging the order of transfer and postings the ground that they were issued on political consideration due to the pressure of some political persons, or on some other extraneous consideration. This phenomenon is to be seen not only in the State of U.P. but in other States in India also. One of us (M. Katju, J.) has already laid down in a comprehensive judgment in Smt. Gayatri Devi Versus State of U.P. 1997 (2) UPLVEC 925 the basic principles which must be adopted in transfer matters and we endorse the views expressed in the aforesaid judgment.

8. In Smt. Gaytari Devi are (supra) this Court has relied on the decisions of this Court in Pradeep Kumar Versus Director, Local Bodies, 1994 91) UPLBEC 156, Pawan Kumar Srivastava versus U.P. State Electricity Board, 1995 (1) UPLBEC 414 and Sheo Kumar Sharma Vs. Basic Shiksha Adhikari, 1991 (1) UPLBEC 69, and we agree with the view taken in those judgments. In these decisions, the Court held that transfer orders should not be passed on political consideration but only on administrative grounds.

9. In our country although it has not been mentioned expressly in the Constitution or in any statutory rule that transfer orders shall not be passed on political consideration but only on administrative grounds yet it is well settled that there are not only Constitutional provisions but also Conventions in the Constitution which have to be followed vide Supreme Court Advocates-on Record Association vs. Union of India 1993 (4) S.C.C. 441. In our country we have borrowed the British pattern of administration, and hence in our opinion where the Constitutional provision or the law relating to government servants are silent, the British conventions will ordinarily apply. One British convention which is applicable to the Civil Services is that civil servants and other public authorities are expected to be politically neutral, Unless this principle is followed strictly there is bound to be chaos in the administration, particularly in these days when governments change frequently. Hence it is absolutely essential that this healthy principles if followed at every level. As regards transfers and postings of government servants, we are of the opinion that this matter is exclusively in the hands of the senior officer of the Department to decide. No doubt if an MLA or any political person or even a laymen has any grievance against a civil servant he can bring

the grievance to the notice of the Senior Officer of the Department, but it is exclusively in the hands of the senior officer to transfer the government employee or not, and that too only on administrative considerations.

10. Unfortunately in U.P. (and in some other states too) in the last few decades or so there has often been excessive political interference in the administration. In Gyatri Devi's case (supra) mention has been made of the Second Report of the Police Commission where instances have been given where the Inspector General of Police could not transfer even an Inspector of Police, and when he tried to do so in fact the Inspector general of Police was transferred and the transfer of the Inspector was cancelled, because the Inspector has connections with the political leadership. Unless this practice is stopped no police officer can effectively control his subordinates. We, therefore, reiterate the transfer is a matter exclusively in the hands of the senior officer of the Department, and it is not to be done on political pressure The Chief Secretary, U.P. is directed to issue necessary instructions to all departments in the light of the above observations expeditiously.

11. It may be mentioned that in the Hindi magazine 'Maya' of 31.12.1999 it has been mentioned that between July 1991 to November 1999, i.e. in about eight and a half years about 5137 government officers have been transferred. Many District Magistrates and S.S.P.s. have been transferred three or four times in a year, e.g. in the districts Ambedkar Nagar, Padrauna, Siddharth Nagar, Bhadohi, Hamirpur, Mahoba etc. Often transfers and postings were made for caste or political reasons. It is often found that those government servants who are close to certain politicians (due to caste or other affiliation) get 'cream' postings. In the magazine 'India Today' of 14.2.2000 it has been mentioned that in U.P. 160 district magistrates and 200 S.Ps. were shifted last year. In the past five years around 800 district magistrates and 1000 S.Ps. were transferred. Nearly half the number of I.A.S. officers in the State have had less than one year's tenure in the past five years. Consequently, the State's spending on transfer allowance skyrocketed from just Rs.1.6 crore in 1995-96 to Rs. 23 crore in 1998-99. This has also contributed to the State's financial crisis.

12. In our opinion the citizens have a fundamental right to good governance, and this right to have good governance is part of Article 21 of the Constitution. Article 21 has been interpreted by the Supreme Court in several decisions to mean that the citizens have a right to a dignified and civilized life, and not merely an animal life. Unless the citizens get good governance it is not possible for them to have a dignified and civilized life. In our opinion good governance is only possible if the government servants are politically neutral and are not transferred or otherwise victimized at the instance of any political party or politicians, as is the practice in England. We are distressed at reading in today's 'Times of India' (Delhi edition) of the transfer of the I.G. Prisons, Shrikrishna merely because of an altercation with an M.L.A. If transfers are done in this manner no civil servant can ever function properly.

13. In this connection reference may be made to the book 'Nice Guys Finish Second' written by Shri B.K. Nehru former IC.S. Officer and former Governor of several States. On page 556 of this book Shri B.K. Nehru said:

"I also studied the organization of the Home Civil Service (in England) and how it was that in spite of a vigorous democracy the civil service had retained its independence in that it was guided by the rules and the law and not be the whims and wishes of transient ministers. The answer was simple. All the three powers which are exercised by the minister in India to bend the civil servant to

his will, namely, appointments, transfers and suspensions, are not exercisable by them at all in the United Kingdom. They are exercised by a very small group of senior Secretaries presided over by the Secretary of the Civil Service Department who reports to the Prime Minister direct. It is they who appoint people, transfer them and punish them, not the ministers. The Prime Minister of course, approves their proposals, but when I asked the head of the Civil Service sign, he was shocked out of his wits. He said, "But that cannot happen." Such is the power of the conventions of the British Constitution, which, if broken, would lead to a furore in Parliament."

14. The above statement of Shri Nehru clearly shows how the British administration functioned, specially regarding transfers and postings of civil servants, and we should follow this healthy convention.

15. We are also of the opinion, that the government should fix some specific period (say of three years) for the posting of a government servant at a particular place, otherwise the government servants will have no stability in life. Several government servants are transferred very frequently and this is bad for the morale of the service. Apart from this, a heavy burden is cast on the exchequer due to such transfers. Hence we direct the Government to fix at the earliest a period of posting during which the government servants will not be ordinarily transferred or disturbed unless there are some very exceptional grounds, which must be recorded in writing.

16. Having laid down the above principle regarding transfers and postings of government servants, we direct that in all cases where a civil servant has a grievance that his transfer was due to political pressure or some other extraneous consideration he may make a representation to the Chief Secretary to the U.P. government who will either himself or through one or more senior officers or committees to be nominated by him decide the said representation against the transfer order within six weeks of making such representation. The representation shall be decided on purely administrative ground and ignoring any political or other extraneous consideration, keeping firmly in mind the consideration that a government servant is expected to be politically neutral, and non-partisan. The Chief Secretary, or his nominee, shall also have power to grant stay of the transfer order till final disposal of the representation.

17. As regards transfers and postings of class I officers in U.P. we direct the State Government to set up a Board similar to the Civil Services Board (C.S.B.) which exists in the Central Government. The functioning of the Civil Services Board at the Centre has proved to be good and efficient from the point of view of ensuring that the civil servants are politically neutral and fair. Hence we direct that a similar board be constituted by the U.P. Government in consultation with the Chief Secretary, U.P. within two months.

18. Some of the directions we have given may amount to judicial legislation. However, it is accepted in the modern age that judges also legislate. The Austinian positivist jurisprudence of the 19th Century has been replaced by sociological jurisprudence in the 20th Century which permits legislative activity by the judiciary. In this connection reference may be made to the decision of the Constitution Bench of the Supreme Court in Sarojini Ramaswami vs. Union of India A.I.R. 1992 S.C. 2219 (paragraph 92) in which the Supreme Court observed:

"In this context, it is also useful to recall the observations of R.S. Pathak, CJ, speaking for the Constitution Bench in Union of India v. Raghubir Singh (Dead) by LRs. (1989) 2 SCC 754: (AIR 1989 SC 1933) about the nature and scope of judicial review in India, The learned Chief Justice stated thus:-

"……It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of the superior courts. "There was a time," observed Lord Reid, "when it was thought almost indecent to suggest that Judges make law – they only declare it…..But we do not believe in fairy tales any more."

19. The petitioner in this case can make a representation to the Chief Secretary to the State Govt. who will decide the representation himself or through his nominee in the manner mentioned above.

20. We may mention that it has often come to our notice in cases where transfer or posting orders are challenged that the petitioner files a copy of a letter of an M.L.A. or other political person recommending transfer of the government servant, but in the counter affidavit it is alleged that the letter is gorged. It is often difficult in such cases to ascertain whether the letter is genuine or forged, and in view of such disputed questions of fact writ jurisdiction is hardly appropriate. Hence in such cases it is better for the government servant to approach the Chief Secretary, U.P. Government and this internal mechanism will be better for this purpose. The Chief Secretary is a very senior government officer with sufficient maturity and seniority to withstand political or other extraneous pressure and deal with the issue fairly, and we are confident that he will do justice in the matter to civil servants. This will also avoid or reduce the floodgate of litigation of this nature in this Court. As regards class I officers, the Civil Service Board shall be constituted for dealing with their transfers and postings (as already directed by us above).

21. With the aforesaid direction the petition is disposed of.

Petition Disposed of.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD MARCH 15, 2000

BEFORE
THE HON'BLE R.H. ZAIDI, J.

Writ Petition No. 13238 of 2000

Neelam Kumari ...Petitioner
Versus
VIth Additional District Judge Bareilly and another ...Opposite Parties

Counsel for the petitioner:
Shri M.A. Qadeer

Counsel for the Respondents:
S.C.

Payment of wages Act, 1936, Ss. 15,17 and 18 readwith payment of wages Rules, R. 11 and 12 and Code of Civil Procedure, 1908, Ss. 141 and 107 and o.41 R. 27-Admission of additional evidence by appellate Court-Permissibility. Held-(para11)

Thus, a joint reading of the provisions of the act, the Rules Framed there under and the code of Civil Procedure, referred to above, clearly demonstrate that the appellate authority had jurisdiction to take additional evidence at appellate stage, if the case for admission of additional evidence is made out within the four corners of order 41 Rule 27 of the Code of Civil Procedure.
Case referred:
1965 LLJ 78

By the Court

1. Heard learned counsel for the petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for a writ. Order or direction in the nature of certiorari quashing the order dated 24.9.1999 passed by the respondent no.1 (VI Additional District judge, Bareilly) acting as appellate authority under Section 17of the Payment of Wages Act, 1936, hereinafter for, "the Act", allowed the

application filed by the respondent no.2 for admission of the additional evidence at the appellate stage.

3. Relevant facts of the case giving rise to the present petition, in brief, are that the petitioner who was working as an Office Assistant with the respondent no.2, filed an application under Section 15 of the Act claiming wages from 1.5.1990. Application filed by the petitioner was opposed by the respondent no.2. parties produced evidence in support of their cases. The prescribed Authority under the Act, after hearing the parties and perusing the evidence on record, allowed the application by its judgment and order dated 30.3.1995 and awarded Rs.6,128.00 as arrears of wages and Rs. 6,128.00 as damages in exercise of powers under Section 15 of the Act. Challenging the validity of the order passed by the prescribed Authority, respondent no. 2 filed an appeal under Section 17 of the Act. During the pendency of the said appeal, an application was also filed by the said respondent which was numbered as 22Ga for admission of additional evidence. By means of the said application the respondent no.2 wanted to file the statements of the petitioner which were not available at the time when the case was pending before the prescribed Authority Application filed by the respondent no. 2 was opposed by the petitioner contending that the appellate authority had no jurisdiction to entertain the application for admission of additional evidence at the appellate stage. The appellate authority relying upon a decision in the B.C.O., Northern Railway v. Regional Labour Commissioner, Jabalpur 1965 LLJ 78 allowed the application by its judgment and order dated 24.91999. Hence, the present petition.

4. Learned counsel for the petitioner Mr. M.A. Qadeer, Advocate. Vehemently urged that the respondent no. 1 had no jurisdiction to entertain the application for admitting additional evidence at the appellate stage and it has acted illegally in entertaining the application and allowing the same. It was urged that the provisions of Order 41 Rule 27. C.P.C., had no application in the proceedings before the respondent no. 1 therefore, the order passed by the said respondent is wholly without jurisdiction and liable to be quashed.

5. On the other hand, learned Standing Counsel supported the validity of the order. It was urged that the respondent no. 1 exercised the same powers which were being exercised by the Prescribed Authority under Section 15 and 18 of the Act read with Rules 11 and 12 of the Rules framed under the Act.

6. I have considered the rival submissions made by the learned counsel for the parties and careful perused the record.

7. Respondent no.2 filed the appeal against the order passed by the Prescribed Authority, under Section 17 of the Act Sub – section (1) of Section 17 of the Act provided as under:-

"17 Appeal –(1) An appeal against order dismissing either wholly or in part an application made under sub-section (2) of Section 15 or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred within thirty days of the date on which the order or direction was made, in a Presidency- town before the Court of Small Causes and elsewhere before the District Court-
(a) … …
(b) … …

8. Section 18 of the Act provided for the powers of the authorities appointed under Section 15 of the Act which reads as under:-

"18 Power of authorities appointed under Section 15.-
Every authority appointed under sub-section (1) of Section 15 shall have all the powers of a Civil Court under the Code of Civil

Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

9. A reading of the aforesaid section reveals that the Prescribed Authority under Section 15 of the Act has got all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of taking evidence and of enforcing the attendance of witnesses etc. and the same is deemed to be a Civil Court for the purposes of Section 195 of the Code of Criminal Procedure.

10. It is, thus, evident that the proceedings before the Prescribed Authority are civil proceedings. Against the order passed by the Prescribed Authority appeal lies before the Court of Small Causes in a Presidency town and elsewhere before the District Court. Proceedings before the Court of Small Causes Court as well as the District Court are the proceedings of a civil nature. At this place, a reference may be made to Section 141 and 107 of the Code of Civil Procedure which provided as under:-

"141 Miscellaneous proceedings.- The Procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation.- In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."

107. Powers of Appellate Court.- (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-
(a) to determine a case finally;
(b) to remand a case;
(c) to frame issues and refer them for trial;
(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Authority shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this code on Courts of original jurisdiction in respect of suits instituted therein."

11. From a reading of the aforesaid provisions, it is apparent that the provisions of the Code of Civil Procedure apply to all proceedings in any Court of civil jurisdiction and that the appellate Court exercises all powers which are being exercised by the Court of original jurisdiction. The proceedings of civil nature, therefore, it had the same powers which are being exercised by the Prescribed Authority. Under Section 18 of the Act, as stated above, the Prescribed Authority has got all the powers of a Civil Court under the Code of Civil Procedure. Further, Rule 11 of the Rules framed under the Act specifically provides that in exercise of powers of a Civil Court conferred by Section 18, the authority shall be guided in respect of the procedure by the relevant Orders of the First Schedule of the Code of Civil Procedure 1908, with such alteration as the authority may find necessary to effecting their substance for adopting them to the matter before him, and save where they conflict with express provisions of the Act or these rules. The provisions of the Act and the Rules no where specifically or by necessary implication prohibit the appellate authority from admitting additional evidence at appellate stage. Order 41 Rule 27 is one of the Orders of the First Schedule of C.P.C. Thus, a joint reading of the provisions of the Act, the Rules framed thereunder and the Code of Civil Procedure, referred to above, clearly demonstrates that the appellate authority had the jurisdiction to admit the additional evidence at the appellate stage, it the case for

admission of additional evidence is made out within the four corners of Order 41 Rule 27 of the Code of Civil Procedure.

12. From the material on record, it is apparent that the statements of the petitioner which were sought to be produced at the appellate stage as additional evidence, were not available by the time the case was pending disposal before the Prescribed Authority, as such a case for admitting additional evidence was fully made out under Clause (d) of sub-rule (1) of Rule 27 of ORDER 41. Learned counsel for the petitioner also did not urge that the case for admitting additional evidence was not made out.

13. In view of the aforesaid discussion, no case for interference under Article 226 of the Constitution of India is made out.

14. The writ petition fails and is dismissed in limine.

Petition Dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.3.2000

BEFORE
THE HON'BLE SUDHIR NARAIN, J.

Civil Misc. Writ Petition No. 7079 of 1984

Rakesh Dutt Pandey ...Petitioner
Versus
VI/Ist Additional District Judge, Kanpur and others ...Respondents

Counsel for the Petitioner:
Shri Ambrish Kumar Sharma

Counsel for the Respondents:
Shri A.N. Sinha
Shri P.K. Surha
Shri Sudhir Mehrotra
S.C.

A. U.P. Urban Building (Regulation of letting, Rent and Eviction) Act, 1972, S. 14- Applicability.
Held-

It is not necessary for applicability of Section 14 of the Act that the person in occupation should be a tenant or a licencee from its inception. The occupation of a person may be permissive while he is living as a member of a family but, subsequently, if the tenant is transferred and for a long time his son or a family member continues to occupy the said accommodation and the land lord accepts the rent, the occupation of such person can be treated as that of a tenant and can be regularised under Section 14 of the Act. The tenant after transfer does not pay the rent and the land lord accepts the rent from the occupant with full knowledge of this fact, it will be taken as an implicit consent from the land lord that he accepts the person in occupation as a tenant. (para 6)

B. U.P. Urban Buildings (Regulation of letting, Rent and Principle underlying under- Effect.

Held-

The same principle can be applied when a building is deemed vacant under Section 12(3-A) of the Act. If the accommodation occupied by the petitioner could be treated as a vacant, under Section 12 of the Act, his application for allotment could not have been thrown without considering this aspect. (para 7)
Case Law discussed
1979 ARC-222
1986 (1) ARC-132
1984 (2) ARC-61

By the Court

1. The petitioner has challenged the order whereby the disputed accommodation has been allotted in favour of respondent no. 4.

2. Briefly stated, the facts of the case are that Uma Dutta Pandey, father of petitioner, was tenant of the first floor portion of House No.112/364-C, Swarup Nagar, Kanpur, of which Smt. Krishna Devi, respondent no.3, is

the land-lady. He was transferred from Kanpur to Lucknow in the year 1971. In the year 1976, an application for allotment was filed by respondent no.4 on the ground that as father of the petitioner had been transferred from Kanpur, the disputed accommodation should be deemed as vacant. The Rent Control and Eviction Officer directed the Rent Control Inspector to submit a report. The Rent Control Inspector submitted the report, stating that Uma Dutta Pandey, father of the petitioner, was transferred from Kanpur in the year 1971, and , on that ground, disputed accommodation be declared as vacant. The Rent Control and Eviction Officer on this report declared the accommodation in question as vacant by his order dated 30.5.1977. An objection on behalf of Uma Dutta Pandey, father of the petitioner, was filed stating that he had never vacated the accommodation. His eldest son, Rakesh Dutta Pandey, the petitioner, was residing in the disputed accommodation and he was working as a lecturer in Economics in a post-graduate college in Kanpur. The landlady submitted a reply and contended that as Uma Dutt Pandey was transferred from Kanpur, it should be deemed as vacant under Section 12(3-A) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). The Rent Control and Eviction Officer held that as the eldest son of the tenant, viz. the petitioner, was residing in the house, the accommodation it could not be treated as vacant, and recalled the order declaring vacancy passed on 6.1.1977. The application filed by the landlady for release of the disputed accommodation was thereafter rejected on 1.7.1977.

3. Respondent no. 3 filed revision against the said order of the Rent Control and Eviction Officer. The revisional court allowed the revision and the case was remanded to the Rent Control and Eviction Officer on the ground that the objection was filed by the petitioner, as the son of the tenant and independently he had no right to file objection and a son of the tenant is not entitled to the benefit of Section 14 of the Act. The Rent Control and Eviction Officer, on remand of the case, passed order on 16.12.1978 declaring the disputed accommodation as vacant. The release application filed by respondent no.3 was, however, rejected on the ground that she did not require the disputed accommodation bona fide. The petitioner, on coming to know of the order dated 16.12.1978, filed application to recall the said order. This application was allowed by the Rent Control and Eviction Officer on 16.8.1979, holding that the petitioner was entitled to the benefit of Section 14 of the Act. Respondent no.4 filed revision against this order. The revisional court allowed the revision on 10.8.1981 taking the view that the petitioner was not entitled to the benefit of Section 14 of the Act. The Rent Control and Eviction Officer, thereafter, allotted it to respondent no. 4 by his order dated 6.2.1984. The petitioner filed a revision against this order. Respondent no. 1 has dismissed the revision by the impugned order dated 17.5.1984.

4. There are three questions involved in the case, firstly, whether there was a vacancy of the disputed accommodation after transfer of the father of the petitioner from Kanpur to other place in the year 1971; secondly, whether the petitioner is entitled to the benefit of Section 14 of the Act and, thirdly, whether the petitioner is entitled for allotment of the premises in question without treating him as an unathorised occupant.

5. The father of the petitioner was, admittedly, the tenant of the disputed premises. He was transferred in the year 1971 from Kanpur to Lucknow. The provisions of the U.P. Act No. 13 of 1972 were then not applicable. By U.P. Act No. 28 of 1976, sub-section (3-A) was added in Section 12 of the Act, which provided that if the tenant of a residential building, holding a transferable

post, under any government or local authority or public sector corporation or under and other employer, has been transferred to some other city, municipal notified area or town area, then such tenant should be deemed to have ceased to occupy such building with effect from the thirtieth day of June following the date of such transfer. This sub-section was not made retrospective in effect. The petitioner on 9.1.1979 filed an affidavit before the Rent Control and Eviction Officer, stating that after transfer of his father, he is residing in the disputed premises and working as a lecturer in Economics department of B.S.S.D. College, Kanpur. He had also applied for allotment under the rule 10(6) of the Rules framed under the Act. It is clear that the petitioner was claiming a right of tenancy and in the alternative for allotment. He was claiming regularisation of his tenancy on the ground that the landlady has been receiving the rent from him, fully knowing that his father was transferred and not residing in the disputed premises, and continued to accept the rent form him for more than five years after the transfer of his father. The application for release and allotment were filed only after the U.P. Act No. 28 of 1976 came into force which provided that the accommodation can be treated as vacant when the employee is transferred to another city.

6. In Ram Chandra Gupta Vs. IInd Addl. District Judge, Allahabad and others, 1979 ARC 222, where the daughter was allotted the premises but after her marriage she left the house and her father continued to reside therein, it was held that the father would be deemed to be residing with the consent of the landlord and the accommodation cannot be treated as vacant under law. The fact that the rent receipts were issued in name of his daughter could not show that the occupant was not living in the house with the consent of the landlord. In Meera Paul and others Vs. IInd ADJ, Faizabad, 1986(1) ARC 132, where a tenant was transferred and it was occupied by the tenant's sister, an objection was taken that she could not be treated as a family member and the accommodation should be deemed as vacant, but the Court repelled the contention and held that she was residing in the premises within the knowledge of the landlady and as the landlady never objected to her occupation, she was entitled to the benefit of Section 14 of the Act. In Ram Palat Singh Vs. Kalpa Nath Rai, 1984 (2) ARC 61, the court held that the mere fact that the occupant's possession was without allotment order was not enough to deny the benefit of Section 14 of the Act. The consent of the landlady may be expressed or implied. The petitioner was claiming the benefit of Section 14 of the Act. The revisional Court by its order dated 10.8.1981 held that a person is not entitled to the regularisation of tenancy under Section 14 of the Act unless he was a tenant or a licencee. It is not necessary for applicability of Section 14 of the Act that the person in occupation should be a tenant or a licencee from its inception. The occupation of a person may be permissive while he is living as a member of a family but, subsequently, if the tenant is transferred and for a long time his son or a family member continues to occupy the said accommodation and the landlord accepts the rent, the occupation of such person can be treated as that of a tenant and can be regularised under Section 14 of the Act. The tenant after transfer does not pay the rent and the landlord accepts the rent from the occupant with full knowledge of this fact, it will be taken as an implicit consent from the landlord that he accepts the person in occupation as a tenant.

7. The petitioner had also filed an application for allotment under Rule 10(6) of the Rules framed under the Act. His allotment application was rejected on the ground that the petitioner was an unathorised occupant. The petitioner was living as a family member of the tenant and after transfer of his father, he had submitted an application for allotment. Rule 10(6)(b) provides that in case a residential building under a tenancy of a

person, who shall be deemed by dint of Rule 12(3) to have ceased to occupy by reason of his or any member of his family another building otherwise acquired in a vacant state, or getting vacant any residential building in the same local area, if the District Magistrate is satisfied that the two buildings are occupied by the tenant and a member of his family separately, and that they are separate in messing, the District Magistrate may allot the residential building deemed to be vacant under Section 12(4) of the Act to the said tenant or to the said member of his family. The same principle can be applied when a building is deemed vacant under Section 12(3-A) of the Act. If the accommodation occupied by the petitioner could be treated as a vacant, under Section 12 of the Act, his application for allotment could not have been thrown without considering this aspect.

8. In view of the above, the writ petition is allowed. The impugned orders dated 10.8.1981,6.2.1984 and 17.5.1984 are hereby quashed. The respondent no. 1 shall decide the matter afresh in accordance with law and keeping in view the observations made above.

9. Considering the facts and circumstances of the case, the parties shall bear their own costs.

Petition Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.3.2000

BEFORE
THE HON'BLE M. KATJU, J.
THE HON'BLE D.R. CHAUDHARY, J.

Civil Misc. Writ Petition No. 15342 of 2000

M/S. Suresh Chandra Varshney & Co., ...Petitioner
Versus
State of U.P. through the Collector, & others ...Respondent

Counsel for the Petitioner:
Shri J.J.Munir

Counsel for the Respondent :
S.C.

Constitution of India – Article 226- Practice and Procedure – Order passed under Section 53 of the Stamp Act is revisable u/s 56 before commissioner- Lawyers are on strike for the last 30 days-court expressed great concern – every judicial and qua judicial officer are required to start hearing the cases in absence of lawyer – in case of further disturbance- concern court or authority shall call the Police.

Held

Direct the judges of all District Courts, commissioners and others presiding officers of the courts or authorities where judicial of quasi judicial work is being done that from tomorrow they must start siting in court and start hearing of the cases and pass orders even in the absence of the lawyers who are on strike. If any body disturbs the working of the courts the District Judge, Collector, Commissioner or the presiding officer of the court concerned or authority shall call the police and prevent them from doing so. The lawyers must know that enough is enough. 1997(3)UPL BEC (Para 4)

By the Court

1. Learned Standing prays for and is granted one month's time to file counter affidavit. List in the week commencing 8th May,2000.

2. Against the impugned order of the Deputy Collector dated 3.2.2000 passed under section 33 of the stamp Act admittedly a revision lies to the Commissioner under section 56 of the Act. Hence ordinarily we would have relegated the petitioner to his alternative remedy.

However, learned counsel for the petitioner has stated that a revision cannot be filed by the petitioner before the learned

commissioner because the lawyers in the Meerut Commissionery are on strike and they are not permitting any judicial work to be done.

3. It has come to our notice that in about half of the District Courts in the State of U.P. the lawyers are strike for about a month and they are not permitting any judicial authority to work. This is deeply regrettable and highly objectionable. The judiciary exists for serving the people and not for the lawyers and judges. In our view the attitude of the lawyers and judges. In our view the attitude of the lawyers of the District Courts and Commissionery of U.P. who are on strike for the last about one month is most irresponsible. This act of the lawyers will no longer be tolerated by this Court and nobody will be allowed to hold the judiciary to ransom. A division bench of this court in Manoj Kumar vs. Civil Judge. 1997(3) UPLBEC 1767 has held that if judicial orders even then courts must sit and pass judicial orders even in absence of the lawyers. and if the functioning of the court is disturbed by anybody police help must be taken by the district Judge or other Presiding Officers. The people of the State are fed up with lawyers strike and they are suffering greatly. The lawyers must understand that litigents, witness etc. come to court from far of places often at heavy expense but they find that the courts are closed just because the lawyers are on strike. This is most unfair to the litigants or their witnesses.

4. We, therefore, direct the judges of all District Courts, Commissioners and other presiding officers of the courts or authorities where judicial or quasi judicial work is being done that from tomorrow they must start sitting in court and start hearing of the cases and pass orders even in the absence of the lawyers who are on strike. If anybody disturbs the working of the courts the Districts Judge . collector , commissioner of the or the presiding officer of the court concerned or authority shall call the police and prevent them from doing so. The lawyers must know that enough is enough.

5. The Registrar of this Court shall circulate a copy of this order forthwith to all the District courts in Uttar Pradesh as well as to all Commissioners, and other judicial of quasi judicial authorities, subordinate to the High Court under Article 227 of the Constitution. The learned Standing counsel shall also send a copy of this order to the Law Secretary to the U.P. Government who must circulate a copy of this order to all the district courts and authorities concerned. The District Judge, Commissioners, and other judicial quasi judicial authorities must send compliance report to the Registrar of this Court.

6. Since the petitioner is unable to file a revision against the impugned order on the facts and circumstances of the case we stay the operation of the impugned order till further orders.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.3.2000

BEFORE
THE HON'BLE B.K. RATHI, J.

Criminal Misc. Application no. 847 of 1998

Shailesh Kumar Agrawal ...Applicant
Versus
State of U.P. and another ...Opp. Parties

Counsel for the Applicant:
Shri V.K. Agnihotri
Shri K.K Arora

Counsel for the Opposite Parties:
A.G.A
Shri L.P. Naihtani
Shri Amendra Nath Singh

Negotiable Instruments Act, Ss.138 and 139 – complaint Maintainability – Presumption.

Held -
Therefore there is presumption u/s 139 in favour of the complainant that the cheque is regarding the discharge of the liability and it is for the applicant to prove the contrary and to rebut this presumption. This can be rebutted by the applicant by evidence only. Therefore at this stage there is no ground to quash the complaint. (Para 6)
Case Law discassed –
1999 (1) SCC 113
1998 ACC (SC) 574
Crl. Misc. Appl. No. 183 of 1994
Decided on 5-4-1999
JT 2000 (1) S.C. 493.

By the Court

1. Both these petitions involved the same question of fact and law. The petitioner in both the cases is same persons and opposite parties in Petition No. 3542 of 1997 is the wife of the opposite party in Petition no. 847 of 1998. Therefore both these petitions are being disposed of by this common judgment.

2. I have heard Sri K.K. Arora, learned counsel for the applicant and Sri L.P. Naithani, learned counsel for the opposite party no.2 and perused the record.

3. Two complaints under Section under Section 138 N.I. Act were filed against the applicant one each by opposite party of these petitions. It is admitted that the applicant Sailesh Kumar Agarwal and the opposite party, Dinesh Kumar Agarwal are real brothers and opposite party, Smt. Sandhya Agarwal is the wife of Dinesh Kumar Agarwal. The two brothers Shailesh Kumar Agarwal and Dinesh Kumar Agarwal . The two brothers Shailesh Kumar Agarwal and Dinesh Agarwal were partners in the firm M/s Chhotiwala Bhojnalaya, Swarg Ashram, Pauri Garhwal. Thereafter a family settlement on 15.02.1995 was taken place and the firm M/s Chhotiwala was allotted to the share of Dinesh Kumar Agarwal. According to the agreement some movables were allotted and in respect of the same it was agreed that the applicant will get Rs.5,75,000/- in four installments and that amount was paid by Dinesh Kumar Agarwal . That in the first week of April, 1995 the applicant offered to return Rs.2,20,000/- to Dinesh Kumar Agarwal in respect of certain other settlement . That accordingly, the applicant issued two cheques; first for Rs.1 lac in favour of Smt. Sandhya Agarwal and another cheque for Rs.1,20,2000/- in favour of Dinesh Kumar Agarwal. Both the cheques are dated 06.04.1995. Both the cheques were presented to the bank and they were returned with the endorsement of unsufficient funds vide memo of bank dated 30.09.1996. That thereafter Dinesh Kumar Agarwal and Sandhaya Agarwal sent separate notices dated 10.10.1995.through registered post to pay the amount. The said amount was not paid within fifteen days of the service of notices and therefore two complaints were filed against the applicants. One by each of them under Section 138 N.I. Act. The applicant has made a request for quashing the proceedings of both these complaints.

4. The first contention of the learned counsel for the applicant, which is in regard to the Petition No. 3542 of 1997 only, is that family settlement took place between two brothers, the applicant and his brother, Dinesh Kumar Agarwal. That amount was payable to Dinesh Kumar Agarwal. That thereafter there was no liability of payment to Smt.Sandhya Agarwal, wife of Dinesh Kumar Agarwal . That there fore the cheques in favour of Smt. Sandhya Agarwal was not for the “discharge of any debt or liability against the applicant “That therefore no offence under section 138 N.I. Act that the cheque should in discharge of the debt of liability does not exist in this case. No. offence under Section 138 N.I. Act. is made out.

5. I have considered the argument. In my opinion, it is without merit. The reason is that Section 139 N.I. Act. reads as follows:

“It shall be presumed, unless the contrary is proved that the holder of a cheque, of the

nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

6. There fore there is presumption in (u/s 139) in favour of the complainant that the cheque is regarding the discharge of the liability and it is for the applicant to prove the contrary and to rebut this presumption. This can be rebutted by the applicant by evidence only. There fore at this stage there is no ground to quash the complaint. The first contention of the learned counsel for the applicant can not be accepted. In **Maruti Udyog limited versus Narendra and others, 1999(1) SCC 113** the apex court has held that there is presumption in favour of holder of cheque under section 139 N.I. Act and the accused should prove otherwise.

7. The next contention of the learned counsel for the applicant is that cheques dated 06.04.1995.were once presented and they were dishonoured for insufficient funds prior to 30.09.1995. They were again presented and dishonoured on 30.09.1995.and thereafter the required notice under proviso (b) to Section 138 N.I. Act was given. That no notice was given after dishonored of the cheques earlier and therefore. The claim is time barred and no offence under section 138 N.I. Act is made out.

8. The complete reply to this argument has been given by Hon'ble Supreme Court in the case of **Sadanandan Bhadran Versus Madhavan Sunil Kumar, 1998 A.C.C.(S.C) .574.** It was held that section 138 N.I. Act does not put any embargo upon the payee to successively present a dishonored cheque during the period of its validity. The cause `of action arises only when the notice is served. on each presentation of the cheque and its dishonor only a fresh right arises and not a fresh cause of action. Once the notice was given under Clause (b) of section 138N.I.Act., cause of action arises and thereafter the payee forfeits his right to further present the cheque. It was observed " that now, the question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file a complaint for its dishonour, and that too within one month from the date the cause of action arises, can be reconciled Having given our anxious consideration to this question , we are of the opinion that the above two provisions can be harmonised, with the interpretation that on each presentation of the cheque and its dishonour a fresh right – and not cause of action – accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under clause (b) of section 138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise."

9. In view of this decision of the Apex Court the argument of the learned counsel can not be accepted.

10. The last contention of the learned counsel for the applicant is that the notice sent by the complainant is not in respect of the amount of the cheques only. In the notices besides the amount of cheques, Rs.550/- has been demanded as cost of the each notice. It is therefore, contended that the notice is is not valid. Learned Counsel in support of the argument has also again referred to clause(b) of Section 138 N.I. Act which provides that the payee or holder in due course of the cheque makes a demand for the payment of "said amount" (emphasis given) of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. It is therefore, contended that "said amount"

(emphasis given) means that the notice should be in respect of the demand of the amount of the cheque only and if it is exceeds the amount of the cheque, the notice is illegal and invalid. Learned Counsel in support of the argument has referred to the decision of this Court in **Criminal Misc. Application No.183 of 1994 decided on 05.04.1999.** In that case the cheque was for Rs.20,000/-. The notice was issued for Rs.2,26,473/-. It was held that the notice is invalid. The facts of the case were different. As against this learned counsel for the opposite party has referred to the decision of Apex Court in the case of Suman Sethi Versus Ajay Kumar Churiwal and another, J.T.2000 (1) SC 493. It was held that :

"Where in addition to 'said amount 'there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving up break up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice".

11. In view of the decision, the contention of the learned counsel for the applicant can not be accepted as in the present case the amount of cheque has been clearly mentioned in the notice. It may also be added that after the service of the notice no amount was tendered by the applicant, In case he would have tendered the amount of the cheque, It might have been argued that no offence under section 138 N.I. Act is made out. The applicant can not avoid the payment after the service of the notice on the ground that the cost of the notice was also demanded.

12. No other point have been pressed in these petitions. Both the petitions therefore fails and are hereby dismissed.

Petition Dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED : ALLAHABAD 16.03.2000

BEFORE
THE HON'BLE D.S. SINHA,J.
THE HON'BLE RATNAKAR DASH,J.

Civil Misc. Writ Petition No. 882 of 1993

Town Area Committee, Haraiya District Basti & others ...Petitioners
Versus
The State of U.P. and others ... Respondents

Counsel for the Petitioners:
Shri R.H.Zaidi
Shri Pradeep Kumar Srivastava
Shri Mazhar Abbas Zaidi

Counsel for the Respondents:
Shri Vinay Malviya,
S.C.

U.P. town Area Act 19914 S – 3(I)(d) – Cancellation of notification by which Town Area Haraiya was constituted – mention of wrong provision in the notification- whether such infirmity renders the notification invalid ? Held 'No.'
Held
Neither it is nor can it be disputed that the respondent no. 1 had the power to cancel the notification establishing the Town Area Haraiya under Section 3 of the Act. It is well settled that mention of wrong provision of statute will not invalidate the exercise of a statutory power, if the power exists and is traceable in any other provision of the statute. The existence and source of the power qua impugned notification is clearly traceable in the provisions of Section 3 of the Act. Thus, the wrong mention of the provision of Section 337 of the U.P. Municipalities Act, 1916 will not invalidate the impugned notification. (Para 7)

By the Court

1. Heard Sri Pradeep Kumar Srivastava, holing brief of Sri Mazhar Abbas Zaidi, the learned counsel appearing for the petitioners, and Sri Vinay Malviya, the learned Standing

counsel of the State of U.P., representing the respondents.

2. In the year 1989, exercising power under Section 3 of the United Provinces Town Area Act, 1914, hereinafter called the 'Act ', the State of Uttar Pradesh, the respondent no.1 constituted Haraiya Town Area in the district of Basti comprising villages Muradipur, Dhanha .khas, Pandit Purwa ,Rajghat, Atwa and Haraiya Ghat vide notification dated 1st September, 1989, a copy of which is Annexure – 1 to the petition.

3. In the year 1992, the respondent no. 1 issued another notification dated 11th August, 1992, a copy whereof is Annexure-11 to the petition. By this notification the respondents purported to cancel the notification dated 1st September,1989, constituting Town Area Haraiya. The petitioners seek to challenge this notification in this writ petition under Article 226 of the constitution of India.

4. It is to be noticed that neither the Town Area Committee not the inhabitants of the Town Area, who could. Possibly, have some grievance, have come forward to challenge this notification instead, the petitioners No. 2,3, and 4, who are the servants of the Town Area and the petitioners No. 5, 6, and 7, who are he contractors of the Town Area, and the Secretary of the Town Area, Claiming to represent the Town Area, have filed this petition to question the act of the respondent no.1 cancelling the notification whereby the Town Area was established. Under the circumstances, in the opinion of the Court, the petitioners have no locus standi to maintain the petition in as much as they do not have any right, either statutory of otherwise, either to have the Town Area established or abolished. This factor alone is sufficient to dismiss the petition.

5. Otherwise also, clause (d) of sub-section (1) of section 3 of the Act empowers the state Government to cancel at any time any notification issued for constituting a Town Area.

6. The learned counsel of the petitioners draws the attention of the Court to the fact that in the preamble of he impugned notification Section 337 of the U.P. Municipalities Act, 1916 is mention as the source in exercise whereof the notification has been issued, and contends that the provisions of Section 337, aforesaid, are not attracted. According to him, this infirmity renders the notification invalid and liable to be quashed.

7. Neither it is nor can it be disputed that the respondent no.1 had the power to cancel the notification establishing the Town area Haraiya under Section 3 of the Act. It is well settled that mention of wrong provision of statute will not invalidate the exercise of a statutory power, if the power exists and is traceable in any other provision of statute. The existence and source of power qua impugned notification is clearly traceable in the provisions of Section 3 of the Act. Thus, the wrong mention of the provision of Section 337 of the U.P. Municipalities Act, 1916 will not invalidate the impugned notification. All told, in the opinion of the Court, the petition is devoid of substances and deserves to be dismissed.

In the result, petition fails and is dismissed. However, there is no order as to costs.

Petition Dismissed.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD MARCH 30, 2000

BEFORE
THE HON'BLE N.K. MITRA, C.J.
THE HON'BLE S.R. SINGH, J.

Special Appeal 783 of 1995

U.P. State Spinning Mill Company Limited ...Appellant
Versus
N.K. Tripathi and another ...Respondents

Counsel for the Appellant:
Shri Krishna Murari

Counsel for the Respondents:
S.C.
Shri O.P. Singh

Constitution of India, Article 226- Termination order- on pertext No longer required- employee was given ground of inefficiency held arbitrary in absence of enquiry direction for reinstatement passed by the Single Judge perfectly valid.
Held-
AIR 1974-SC-2192
1999(2) UPLBEC 1048
1982(1) Sec. 645
1985(4) Sec.-201
J.T. 1990(3) SC-589
AIR 1966 SC 1364
1993 (3) SC 617

By the Court

1. The Special Appeal in hand is directed against the judgment and order dated 17.8.1995 of the learned Single Judge in Civil Misc. Writ Petition No.18277 of 1987 (N.K. Tripathi Vs. M/s U.P. State Spinning Mills Company (No.2) Limited, Unit-1, District Jaunpur through its Manager Administration and another) whereby the learned Single Judge "set aside" the order dated 11.5.1987 impugned in the writ petition whereby the services of the petitioner-respondent were terminated by the appellant-employer with immediate effect as "no longer required" by giving a month's salary in lieu of the notice period.

2. It is not disputed that the petitioner-respondent Nawal Kishore Tripathi was appointed Assistant Mill Engineer in the Jaunpur Unit of the Mill on a consolidated salary of Rs.1200/- plus allowances mentioned in the appointment order dated 1.9.1986 which contained a stipulation that the services were purely temporary and liable to be terminated without assigning any reasons by giving month's notice from either side. The illegality of the order was challenged before the learned Single Judge on grounds, inter alia, that he had been discriminated in the matter of employment in that one Shri B.N. Sachan who came into employment five months after the petitioner-respondent has been retained while the services of the petitioner-respondent came to be terminated in "arbitrary and copricious exercise of power", that the order of termination was hit by Article 14 and 16 of the Constitution: and that it was otherwise bad in law. The writ petition was opposed by the appellants herein on the ground that the petitioner-respondent was found "unsuitable" and his services were, therefore, terminated on the ground of unsuitability in terms of the service conditions. Learned Single Judge held that since one of the grounds of termination as stated in the counter affidavit was the "charge" that the petitioner used to remain absent without obtaining leave and, therefore, the services of the petitioner were liable to be terminated without notice and enquiry in tune with the principles of natural justice.

3. We have had heard the learned counsel appearing for the parties and gone through the judgment under challenge as also the fact of the case. It has been submitted by the learned counsel appearing for the appellants that the services of the petitioner-respondent who was a temporary hand were terminated by an order of termination simplicitor casting no stigma; that the order of termination was passed on

the ground of "unsuitability" and since no stigma was cast, the learned Single Judge was not justified in interfering with the order of termination.

4. The submission made by the learned counsel appearing for the appellants cannot be countenanced. It is not disputed that the petitioner-respondent was granted an increment vide order dated 30.12.1986 and it being not the case of the appellants that the petitioner-respondent could earn the increment irrespective of his performance being good or bad, termination of his services as "no longer required" cannot sustained unless valid justification is shown in the counter affidavit. When the services of temporary government servants are terminated as "no longer required" the question arises as to why the services are no longer required – whether the post has been abolished or the employee has been found unsuitable for the job ? In the counter affidavit the order of termination is sought to be justified on the ground that the services of the petitioner-respondent had been dispensed with by a simplicitor order of discharge as the management found that the petitioner was not "suitable" for the post for which he was appointed i.e. the post of Assistant Mill Engineer in that during the short span for one year there was report of "inefficiency" and that he was also in the "habit of going on leave without proper sanction." Termination of the services of temporary government servants on the ground of "inefficiency" is punitive termination. Where, therefore, there are reports against the employee concerned about "inefficiency" and any act or omission amounting to misconduct and his services are terminated in the background of such report, the order of termination becomes punitive and it cannot be sustained if it has been passed without holding an enquiry. In Shamsher Singh Vs. State of Punjab, AIR 1974 S.C. 2192, their Lordships of the Supreme Court were considering the question as to when the termination of services of a probationer could be held to be punitive. It was held : "If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

5. The principles governing termination of service of a temporary employee are more or less same as those of a probationer. From the decision aforestated it is apparent that the termination of services of the petitioner-respondent on the ground of "inefficiency" was punitive in nature and since principles of natural justice were violated, the order of termination was rightly set at naught by the learned Single Judge. Further more, in the counter affidavit filed in the writ petition it has been stated that not only there were reports of "inefficiency" against the petitioner but he was also in the "habit of going on leave without proper sanction." This is our opinion was rightly held by the learned Single Judge to be tantamount to a charge of misconduct on which the services of the petitioner-respondent were not liable to be terminated without enquiry. In other words the termination of service on the ground of unauthorised absence is tantamount to termination of misconduct which could not have been done without holding proper enquiry. On the facts of this case it is established that the termination of the services of the petitioner-respondent was grounded on "inefficiency" and "misconduct". In Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others (1999) 2 UPLBEC 1048 it has been propounded that if the findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad in law. The

decision aforestated will be applicable to the facts of the present case.

6. In Robert D'Souza Vs. Executive Engineer, Southern Railway and another, 1982 (1) SCC 645, it was held that striking of the name of the concerned employee from the rolls for unauthorised absence from duty for 8 consecutive days amounted to termination of services on the ground of misconduct and termination of service on such grounds without complying with minimum principles of natural justice would not be justified. In H.D. Singh Vs. Reserve Bank of India and others, (1985) 4 SCC 201, the Supreme Court held that striking of the name from the rolls for the reasons of unauthorised absence from duty amounted to arbitrary action. In State Bank of India Vs. Workmen of State Bank of India and another, JT 1990 (3) SC 589, the Supreme Court considered the effect of discharge from service on similar ground on one month's notice or pay in lieu thereof and held that it was not a discharge simplicitor or a simple termination of service but one camouflaged for termination based on serious misconduct. In Mafatlal Narandas Barot Vs. J.D. Rathod, Divisional Commissioner, State Transport Mehsana and another, AIR 1966 SC 1364, it has been held that, "an employer may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed."

7. In D. K. Yadav Vs. M/s J.M.A. Industries Limited, JT 1993 (3) SC 617, the decisions aforestated have been relied on and it has been held that termination of services of the workmen therein in terms of Clause 13(2)(iv) of the Standing Orders which provided for automatic loss of lien on the post in case of expiry of eight days' absence from duty was struck down on the ground of having been passed in breach of principles of natural justice. Learned Single Judge, in our opinion, committed no error in quashing the order of termination. The appeal is, therefore, liable to be dismissed.

Accordingly the appeal fails and is dismissed, however, without any order as to costs.

Appeal dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.4.2000

BEFORE
THE HON'BLE V.M. SAHAI, J.

Civil Misc. Writ Petition No. 3728 of 2000

Archana Srivastava ...Petitioner
Versus
Vice Chancellor, University of Allahabad ...Respondents

Counsel for the Petitioner:
Shri Rajesh Tripathi

Counsel for the Respondents:
S.C.
Sri O.P. Sharma
Sri P.S. Baghel

Constitution of India, Article 226- Cancellation of Admission for the session 96-97 on the pertext the original application of the Petitioner is not traceable petitioner was not at fault – cannot be peralised.
Held (Para 2)
All these facts clearly establish that the petitioner was not at fault and if the petitioner's application form was not traceable in the university office, it was the fault of the respondents for which the petitioner cannot be penalised.

By the Court

1. The petitioner passed her B.A. examination from Allahabad University in 1996 in second division with 57.19% marks. In January 1997 notification was published in newspaper inviting applications for LL.B. first

year admission for the session 1996-97. Petitioner filled up the form and deposited it in the office on 13.1.1997. Receipt no.4580 was issued to her on same day. For 1996-97 there was no entrance examination and admissions were on the basis of marks secured by the candidates in graduation or post graduation examination. Intimation card was issued by Dr. H.N. Tiwari, chairman LL.B. admission committee on 25.11.1998. The petitioner deposited admission fee on 26.11.98 and she was enrolled as LL.B. first year student of Allahabad University. She was issued enrolment certificate by faculty of law on 24.2.1999. She joined regular law classes. In the short counter affidavit it is stated that the university received a complaint of large scale bungling in admissions of LL.B. first year of 1996-97. The university, thereafter, constituted a committee which found that 214 candidates had been wrongly admitted. Their admissions were cancelled. The petitioner's name was also included in this list. According to the respondents, the petitioner's original application was not available in their office. This is the sole ground on the basis of which the petitioner's admission of LL.B. first year has been cancelled.

I have heard Sri Rajesh Tripathi, learned counsel for the petitioner and Sri P.S. Baghel, learned counsel appearing for the respondents.

2. In pursuance of the order passed by this court detailed counter affidavit has also been filed. But there is no denial of the receipt issued by the university or the signature of the assistant. The only reason for cancellation of the admission is that the application form of the petitioner is not traceable in university records. The question is whether this was sufficient to give rise to an inference in law that the petitioner was guilty of malpractice as alleged in the counter affidavit. Copy of the receipt issued by the university has been filed as Annexure-2 to the writ petition. It clearly mentions, "Received an application form for admission", from the petitioner. The university has failed to bring on record any material to show that this receipt was forged. It claims that since the admission form filled by the petitioner is not available in university record the admission has been manipulated by the office. In other words the petitioner is being held guilty because of university's failure to trace the admission form in record. In law no one can take benefit of its won mistake. The recital in the receipt is clear and specific. It cannot be overlooked. In absence of denial about the receipt it cannot be assumed that petitioner obtained the admission without any application form. Moreover there is no allegation that the university took any action against any staff and found that these receipts were manoeuvred. Therefore, it is, reasonable to assume that the petitioner deposited her admission form in the university for securing admission in LL.B. first year for the session 1996-97. She was admitted by the Chairman LL.B. admissions Sri H.N. Tiwari of the university and intimation card was also issued to her. It has not been explained how the intimation card was issued by the chairman admission committee because normally the intimation card was issued by the chairman admission committee because normally the intimation card must have been issued on admission form and not otherwise. Petitioner deposited her fees also. All these facts clearly establish that the petitioner was not at fault and if the petitioner's application form was not traceable in the university office, it was the fault of the respondents for which the petitioner cannot be penalised.

3. In the rejoinder affidavit it is alleged that the committee of enquiry constituted by the university did not afford any opportunity to the petitioner and the university too acting on this report cancelled petitioner's admission without affording any opportunity, therefore, entire proceedings were against principles of natural justice. In my opinion it is not necessary to decide this as I have held that on the facts the order cancelling petitioner's

admission was contrary to law and it cannot be upheld.

4. In the result, this petition succeeds and is allowed. A writ of mandamus is issued to the respondents to permit the petitioner to pursue her studies in LL.B. first year course for session 1996-97 and she be permitted to undertake LL.B. first year examination to be held by the university. Since the petitioner could not attend her classes due to the fault of the university, the shortage in attendance is condoned. This order shall be complied by the university within 15 days.

Parties shall bear their own costs.

A certified copy of this order be issued to the learned counsel for the parties within 48 hours on payment of usual charges.

Petition Allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.5.2000

BEFORE
THE HON'BLE SUDHIR NARAIN, J.

Civil Misc. Writ Petition No. 6543 of 1983

Ch. Badri Dass (since deceased) represented by L.Rs ...Petitioner
Versus
The Additional District Judge, Dehradun and others ...Respondents

Counsel for the petitioner:
Shri Rajesh Tandon

Counsel for the Respondents:
Shri A.D. Prabhakar
S.C.

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, Ss. 20(2) (a), 20 (4) and S.30 (1) – Date of first hearing – Meaning of – Tenant, held, also entitled to adjustment of deposit under S. 30 (1) . Held (Para 4 and 7)

Admittedly the court did not frame any issue in the case prior to 25.2.1978. There is no other material to show that the court had applied its mind in regard to the merits of the case prior to 25.2.1978. The deposit made by respondent no. 3, in these circumstances, shall be taken to have been made prior to the date of first hearing.

The respondent had deposited the amount under section 30 (1) of the Act, prior to depositing the amount under Section 20(4) of the Act. The respondent had deposited Rs. 1019.06 p. on 2.7.1974 before the first date of hearing in the court. It was reported that there was deficiency of Rs. 1214.50 p. to get the benefit of the deposit under section 20(4) of the Act. The respondent had already deposited Rs. 1214.50 p. in the proceedings under section 30(1) of the Act.
Case law discussed:
1995 (1) ARC 563
2000(1) AWC 549
1997(1) ARC 139

By the Court

1. The petitioner has challenged the judgment of the trial court dated 23.11.1978 dismissing the suit filed by him. Against the judgment of the trial court the petitioner preferred a revision and the learned revisional court vide its order dated 14.2.1983 dismissed the revision against the petitioner. The petitioner filed a S.C.C. Suit No. 39 of 1974 on 9.2.1974 for recovery of Rs. 831.41p. as arrears of rent, ejectment and damages with the allegations that respondent no.3 was tenant in the disputed premises at the rate of Rs. 73 .13p. per month. However, the rent being not paid since 1.9.1972 a notice dated 29.5.1973 was sent to him but inspite of the service of the notice, the rent was not paid and, therefore, he was liable for eviction on the ground mentioned under Section 20(2)(a) of U.P. Act No. XIII of 1972 (hereinafter referred to as the Act') The respondent-tenant filed written statement and claimed benefit of the deposit having been made by him under Section 20(4) of the Act. The trial court having found that respondent no.3 had deposited the entire arrears of rent on the first

date of hearing along with interest and cost of the suit as provided under Section 20 (4) of the Act, the suit for eviction was dismissed. The petitioner filed a revision against this order. Respondent no.1 dismissed the revision on 14.2.1983. These decisions have been challenged in the present writ petition.

2. I have heard Shri Rajesh Tandon, learned counsel for the petitioner, and Shri A.D. Prabhakar, learned counsel for the contesting respondent.

3. The sole question involved in this petition is whether the respondent-tenant had deposited the amount on the date of first hearing as contemplated under Section 20(4) of the Act. It may be necessary to indicate certain facts to decide this question. The respondent-tenant filed a suit in the court of the District Judge. The District Judge transferred the suit vide its order dated 4.5.1974 to the Ist Additional Civil Judge. The file of the case was however, wrongly, transferred to the court of IInd Additional Civil Judge, Dehradun. The court issued summons, fixing 5.7.1974 for filing written statement and 12.7.1974 for framing issues. Respondent no.3 on 2.7.1974 (before the date fixed for filing written-statement) applied to the court to permit him to deposit a sum of Rs. 1019.06p. claiming benefit under Section 20(4) of the Act. The court allowed the application of respondent no.3 and he deposited sum of Rs.1019.06 p. Respondent no.3 further on 1.12.1975 deposited sum of Rs.4450/-. It appears an objection was taken that the court had no jurisdiction to decide the suit as the District Judge had transferred the case to the Ist Additional District Judge and not to the IInd Additional District Judge. On 3.5.1977 the District Judge transferred the case to the IInd Additional District Judge. Dehradun where the case was already pending. The court framed issues on 20.2.1978.

4. The court took the view that the date of first hearing will be 25.2.1978, i.e., the date on which the issues were framed and not prior to it. The learned counsel for the petitioner contended that the date mentioned in the summons for filing written-statement or framing of issues should be taken as the date of first hearing. In Advaita Nand Vs Judge, Small Cause Court, Meerut & Others, 1995 (1) ARC 563, it was held that the date of the first hearing shall be the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues if necessary. Admittedly the court did not frame any issue in the case prior to 25.2.1978. There is no other material to show that the court had applied its mind in regard to the merits of the case prior to 25.2.1978. The deposit made by respondent no.3, in these circumstances, shall be taken to have been made prior to the date of first hearing.

5. The learned counsel for the petitioner has placed reliance on Bhagwati Devi alias Bhaggo Devi V. IIIrd Additional District Judge, Agra & Others, 2000 (1) A.W.C. 549. This decision also followed the decision of the Apex Court in Adwatyanand Versus Judge Small Causes Court (Supra) and made following observations in para 20 of the judgment :

"As already noted above, the court must find out on the facts of each case as to what is the date on which the court for the first time proposes to apply its mind to determine the points in controversy and this may even including framing of issues, if so mentioned in the summons."

When the court proposes to apply its mind to determine the points in controversy is to be examined on the facts of each case.

6. Secondly, the District Judge had transferred the suit on 4.5.1974 to the Ist Additional Civil Judge. However, the record

of the suit was wrongly sent to the IInd Additional Civil Judge. The case remained pending before him. The District Judge on 3.7.1977 transferred the case to the IInd Additional Civil Judge and it is after this date the IInd Additional Civil Judge could try the suit and apply its mind to the controversy involved in the suit. The respondent had deposited the entire amount prior to the date of transfer of the case.

7. Thirdly, the respondent had deposited the amount under section 30(1) of the Act, prior to depositing the amount under Section 20 (4) of the Act and such amount being adjusted, he was entitled to the benefit of the deposit under Section 20 (4) of the Act. The respondent had deposited Rs. 1019.06p. on 2.7.1974 before the first date of hearing in the court. It was reported that there was deficiency of Rs. 1214.50p. to get the benefit of the deposit under Section 20 (4) of the Act. The respondent had already deposited Rs. 1214.50p. in the proceedings under Section 30 (1) of the Act. In Mahendra Nath Tandon Vs VI Additional District Judge, Kanpur Nagar, & Others, 1997 (1) ARC 139, it has been held that the tenant is entitled to the benefit of deposit, made by him under Section 30 (1) of the Act even though such deposit may not be valid in terms of Section 30 (1) of the Act as Section 20(4) of the Act provides that the tenant can deposit the amount after deducting the amount already deposited by him under Sub- section (1) of Section 30 of the Act.

8. For the reasons stated above, the courts below rightly gave benefit of deposit made by the respondent under Section 20(4) of the Act.

9. The petition is accordingly dismissed. The parties shall, however, bear their own costs.

REVISIONAL JURISDICTION
CIVIL SIDE
DATED ALLAHABAD APRIL 28, 2000

BEFORE
THE HON'BLE D.K. SETH, J.

Civil Revision No. 340 of 1998

Radha Saran Dubey & another...Applicants
Versus
Ram Niwas & others ...Opposite parties

Counsel for the Revisionist:
Shri Janardan Sahai

Counsel for the Opposite Parties:
Shri V.K. Birla

Code of Civil Procedure, 1908, O.VI R..17 – Scope.
Held, (Para 16)

Inasmuch as in the present case it is altogether a new cause of action that is being sought to be introduced changing the whole complexion of the suit introducing multifaciousness and misjoinder of cause of action and that too a cause of action that had purported to have arisen after filing of the suit, which normally can not be incorporated in the suit. A suit is filed only in respect of cause of action that already had arisen and that too, between the parties but not between the plaintiff and a stranger to the suit. Subsequent development related to the same cause of action arising between the parties in respect of the cause of action involved in the suit may be brought about by way of amendment.

Case Law discussed :
82-C.W.N.1.
AIR 1986 Cal. 113.
AIR 1978 Mad 285 (F.B.)
AIR 1968 SC 1165.
AIR 1974 SC 1178
AIR 1974 A 1173
AIR 1989 Cal. 190.
1987 ACJ 110.
1987 ACJ 83

By the Court

1. The order dated 10th July, 1998 passed by the Additional Civil Judge (Senior

Division) Second Court, Mathura in Original Suit no. 71 of 1992 has been challenged. By the said order the revisionists' application for amendment, which is Annexure II to the said application has since been rejected. Mr. Rakesh Bahadur, learned counsel for the revisionist contends that in view of the amendment that was allowed in the plaint as is apparent from paragraph 1 of the amended plaint, Thakur Govinda Dev Ji Maharaj has been described as the owner of the property to whom the plaintiffs are paying rent. Therefore, in order to prove their title, it has become necessary to implead sebait of Thakur Govind Ji Maharaj and therefore, by means of amendment it was sought to implead one Anjan Kumar Dev Goswami as party defendant to the proceeding with the added amendments to the extent that the said Anjan Kumar Dev Goswami who is sebait of Thakur Govind Dev Ji Maharaj had threatened the plaintiff of dispossession on 31st March, 1998 and that the cause of action had arose on 31st March, 1998 when the plaintiff was threatened of dispossession. Therefore, this amendment should have been allowed in order to determine the real question in issue. The same neither changes the nature of the suit nor introduced a new cause of action.

2. Mr. V.K. Birla, learned counsel for the opposite parties on the other hand contends that there has been inordinate delay in preferring the amendment. Inasmuch paragraph 1 of the plaint was amended in 1993. Whereas the application for amendment was made in 1998. He secondly contends that the plaintiffs are not allowing the suit to proceed and by virtue of such amendment, they are dragging on the suit. He further contends that the plaintiffs had filed amendment earlier, they could have incorporated the present amendment on earlier occasion as well.

3. I have heard both the learned counsel at length.

4. So far as the question of delay is concerned as contended by Mr. V.K. Birla does not seem to be sound proposition. Inasmuch as in the amendments application the cause of action was said to have arisen on 31st March, 1998. Therefore, the amendment could not have been asked for before 31st March, 1998. It is immaterial whether another amendment was allowed in 1993. There is no provision that once amendment is allowed, the subsequent amendment application would not be maintainable.

5. So far as the conduct is concerned, that is also immaterial. Whether it will delay the process or not has nothing to do with the question of amendment. The principle that has to be considered while dealing with the application for amendment is not the question of conduct of the parties. On the other hand, it has to be seen whether the amendment changes the nature and character of the suit property and brings about the multifariousness or it introduced a new cause of action or there is any misjoinder of cause of action or not.

6. In **Bhuramal V Samla Dallurband** (82 Calcutta Weekly Notes 1) and **Monika V. Bisunikash** (AIR 1986 Cal. 113), it was held that by way of amendment a new case or new cause of action cannot be allowed to be set up. Nor any party can be allowed to convert his claim into one of different character. In **Kumarswamy.V. V.D. Najappa** (AIR 1978 Mad. 285 (FB), it was held that where the amendment sought for sets up a totally different cause of action which ex facie cannot stand on a line with the original pleading, amendment is to be refused. A pleading can only be amended to substantiate, elucidate, expand the pre- existing fact contained in the original pleading.

7. Under Order VI, Rule 17 of the Code of Civil Procedure such amendments are permissible "as may be necessary for the purpose of determining the real question in controversy between the parties." Therefore,

in order to allow an amendment the court has to consider whether the amendment is necessary for determining the real question at issue. It cannot bring in new case, that too between the plaintiff and a stranger to the suit even though the stranger may be sought to be added as a party.

8. In the present case the suit was filed in 1992 on the basis of the cause of action alleged to have arisen on 27th January, 1992. There cannot be a suit in respect of a cause of action which alleges to have arisen after the suit is filed. Had it been a case that the cause of action is a continuation of a cause of action in the suit and was reason of any action on the part of the parties in the suit in such event the question would have been different. It might be treated to be a subsequent development and not an independent cause of action. Whereas in the present case the cause of action which alleged to have arisen on 31st March, 1998 related to a stranger to the suit who was not a party to the suit at all. Therefore the same is altogether a new cause of action, which is not related to the cause of action already involved in the suit itself and as such the cause of action that arise after the suit is instituted which is not a subsequent development and will be unrelated in respect of the cause of action that was involved in the suit and not being concerned with the parties to the suit, the same cannot be introduced by way of amendment. In case this amendment is allowed, in that event it will be introducing a new cause of action in respect of different persons.

9. It is a settled principle of law that a suit is to be tried on original cause of action. A suit is ordinarily tried on the cause of action as it existed on the date of institution. The word 'may' in the first part of Order VI, Rule 17 of the Code is in general terms, but, the words " all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy" in second part carries the mandate.

10. But there are some exceptions to the above rules. In such cases amendment may be permissible where the court finds that (1) by reason of subsequent change of circumstances the original relief claimed has become inappropriate, (2) the subsequent changed circumstances shortens litigation, or (3) notice to subsequent change is required to be taken of, to do complete justice between the parties.

11. The above view may find support in **Nair Service Society. V. K..C. Alexander** (AIR 1968 SC 1165); **Shikarchand V Dip Karmi Sabha** (AIR 1974 SC 1178); **Allahabad Theaters. V. Kusum** (AIR 1974 All 73); **Bibhas Chandra Bose V. Dolly Bose** (AIR 1989 Cal. 190);

12. The prayer for impleadment of a stranger by way of amendment does not leave the impleadment as an amendment. It is in fact addition of a party in order to find out as to whether the presence of such party is necessary for the disposal of the suit. Parties are added when they are either necessary parties or proper parties. The suit as framed even after the amendment that was allowed does not leave any scope to include Anjan Kumar Dev Goswami either as a necessary or a proper party. There was no question of Anjan Kumar Dev Goswami to be impleaded as a party even if he is a Sebait of Thakur Govind Dev Ji Maharaj and the property belongs to the deity so long the plaint does not disclose any dispute with regard to ownership or title of Thakur Govind Dev Ji Maharaj or the plaintiffs. Even then it would suffer from multifariousness and misjoinder of cause of action. Thus by no stretch of imagination the said Anjan Kumar Dev Goswami could be added as a party in the plaint.

13. Then against Anjan Kumar Dev Goswami has not been sought to be added as a party as Sebait of Thakur Govind Dev Ji Maharaj nor Govind Dev Ji Maharaj has also been sought to be added as a party. Therefore, the contention of Mr. Rakesh Bahadur that the

presence of the owner is necessary does not stand to reason. Inasmuch as in the plaint, Thakur Govind Dev Ji Maharaj has been said to be the owner of the property but Thakur Govind Dev Ji Maharaj has not been sought to be added as a party. Whereas Anjan Kumar Dev Goswami has been sought to be added as a party who has not been described as Sabeit in the amendment sought for. Though in the pleading a cause of action was sought to be introduced contending that Anjan Kumar Dev Goswami is a Sabeit of Thakur Govind Dev Ji Maharaj, but such pleading cannot suffice unless the description of the parties is proper. In such circumstances, addition of Anjan Kumar Dev Goswami would not help Mr. Rakesh Bahadur in the contention that the owner is being sought to be added.

14. A person may have dual capacity or entity one as a person and another as an official capacity holding the office of Sabeit representing the interest of the deity. Here in the amendment that has been sought for, there is no whisper seeking to say that Anjan Kumar Dev Goswami was representing the interest of the deity. Even in the amendment sought for it is not pleaded that in the capacity of Sabeit, the said Anjan Kumar Dev Goswami had threatehed to dispossess the plaintiffs.

15. Mr. Rakesh Bahadur had relied on the decision in the case of **Rajendra Kumar Tewari and others. Vs. Civil Judge & Others** (1987) Alld. Civil Journal, 110) in order to sustain his contention that the delay should not be a ground for refusing amendment. The said decision cannot help us in the present situation since even if the delay is not taken into consideration still then on merit the amendment could not be allowed. Therefore Mr. Rakesh Bahadur cannot draw any inspiration relying on the said decision so far as the facts and circumstances of this case are concerned.

16. He then relies on the decision in the case of **Kamal Ragmi Sharma & Others Vs. Nepal Bank Limited** (1987 Alld. Civil Journal 83). That decision will not help us since in the said case written statement was filed by both defendant no. 1 and 3 and defendant no. 3 had asked for amendment of the written statement, which was neither against the will nor against the wish of the defendant no2. Therefore, this Court had taken the view that such an amendment was rightly allowed. This case cannot come to aid of in the facts and circumstances of the case. Inasmuch as in the present case it is altogether a new cause of action that is being sought to be introduced changing the whole complexion of the suit introducing multifaciousness and misjoinder of cause of action and that too a cause of action that had purported to have arisen after filing of the suit, which normally can not be incorporated in the suit. A suit is filed only in respect of cause of action that already had arisen and that too, between the parties but not between the plaintiff and a stranger to the suit. Subsequent development related to the same cause of action arising between the parties in respect of the cause of action involved in the suit may be brought about by way of amendment. Therefore, this decision does not help us .

17. For all these reasons, this revisional application fails and is accordingly, dismissed. Interim order, if any stands discharged. The learned trial court shall dispose of the suit as early as possible, preferably within one year from, the date a certified copy of this is produced before it. The revisionists shall not seek any adjournment. No cost.

18. Let a certified copy this order be issued to the learned counsel on the payment of usual charges at the earliest.

APPELLTE JURISDICTION
CRIMINAL SIDE
DATED ALLAHABAD MAY 04, 2000

BEFORE
THE HON'BLE B.K. RATHI, J.

Criminal Misc. Bail Application No. 3746 of 2000

Crime No. 156 of 1999 u/s 18/2 N.D.P.S. Act P.S. Badshahi Naka, District Kanpur Nagar

Mohd. Fahim ...Applicant
Versus
State of U.P. ...Respondent

Counsel for the Applicant:
Shri P. Khare

Counsel for the Opposite Parties:
A.G.A.

Narcotic Drugs and Psychotropical Substances Act, S-50- Recovery of 200 gms heroine from accused- No enemity with the police party shown- Compliance of S.50 mentioned in memo of arrest and recovery- Co- accused granted bail- Claim of parity not sustainable- Bail, held cannot be granted. (Para 5, 7 and 8)

I. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50, and particularly, the safe- guards provided in that section were complied with, it would not be advisable to cut short a criminal trial.

II. In the present case, the quantity recovered was 200 gms. Smack which, by no means, can be deemed to be insignificant. The chemical examiner's report is there that it is heroine. It is common knowledge that heroine is highly priced narcotic drug which is most dangerous and deleterious. The recovery of such highly priced narcotic drug in sizeable quantity of 200 gms. can not easily be planted falsely, particularly when the applicant has not shown that any of the members of police party making the recovery was inimical to him. The party was headed by an officer of the rank of Circle Officer. The memo of arrest and recovery does mention this fact also that compliance of Section 50 of the N.D.P.S. act was made.

III. Having regard to the totality of the facts and circumstances of the case, I do not find any ground to release the accused/applicant on bail.

Case law discussed:
1981 (18) ACC. 182
AIR 1977 SC 109.
JT 1999 (4) S.C. 595
JT 1999 (6) S.C. 397

By the Court

1. The applicant Mohd. Fahim seeks bail in a case under Section 18/21 of the N.D.P.S. Act.

2. I have heard Sri P. Khare, learned counsel for the applicant and the learned A.G.A.

3. The prosecution case is that on the basis of a tip off Special Operation P.S. Badshahi Naka, district Kanpur Nagar, headed by C.O. Daya Nand Misra accompanied by other police personnel, recovered 200 grms. illicit smack from the possession of the applicant at about 11.30 A.M. on 12.08.1999 near triangle of Coperganj, police station Badshahi Naka. The ground pressed in support of the bail plea is that no compliance was made of Section 50 of the N.D.P.S. Act and that the co-accused Madan Mohan Shukla from whom 220 gms. Smack was simultaneously recovered was bailed out by Hon'ble Krishan Kumar, J. in Criminal Misc. Bail Application No. 4564 of 2000 by order dated 16.03.2000. Thus, the plea of parity is advanced. The applicant denies the alleged recovery and pleads false implication.

4. So far as the question of parity is concerned this court held in the case of **Sita Ram Versus State, 1981 (18) ACC Page 182** that the claims of the principle of consistency and demand for parity by the accused however are not compelling ones and cannot override the Judge's contrary view in the case

before him if even the awareness of the desirability of consistency fails to move him to modify his view. In other words, this is only a factor to be considered and not a governing consideration. In the case of **Ashok Kumar Versus State of Punjab. AIR 1977 SC 109**, the Hon'ble Supreme Court declined to follow the principle in the matter of sentence.

5. With all respects to the Hon'ble Judge who granted bail to the co-accused Madan Mohan Shukla on the ground of non compliance of Section 50 of the N.D.P.S. Act, I wish to say that the view taken by him is not in tune with the law laid by the apex Court. The Hon'ble Supreme Court has laid down in the case of **State of Punjab Versus Baldev Singh, J.T. (4) SC 595** that the question whether or not the safe-guard provided in Section 50 were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50, and particularly, the safe guards provided in that section were complied with, it would not be advisable to cut short a criminal trial.

6. In another case of **Union of India Versus Ram Samujh & another, JT 1999 (6) SC 397** it has been ruled that to check the menace of dangerous drug flooding the market, the Parliament has provided that the person accused of offence under the N.D.P.S. ACT should not be released on bail during trial unless mandatory conditions provided in Section 37 justify the same. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the N.D.P.S. Act. It can be granted in case where there are reasonable grounds for believing that, the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. It is the mandate of the legislature, which is required to be followed.

7. In the present case, the quantity recovered was 200 gms. Smack which, by no means, can be deemed to be insignificant. The chemical examiner's report is there that it is heroine. It is common knowledge that heroine is highly priced narcotic drug which is most dangerous and deleterious. The recovery of such highly priced narcotic drug is sizeable quantity of 200 gms can not easily be planted falsely, particularly when the applicant has not shown that any of the members of police party making the recovery was inimical to him. The party was headed by an officer of the rank of Circle Officer. The memo of arrest and recovery does mention this fact also that compliance of Section 50 of the N.D.P.S. Act was made. The order of the lower court rejecting the bail shows that 31.01.2000 was fixed for the framing of charges. Naturally, now the case must be in the process of recording evidence or in concluding stage.

8. Having regard to the totality of the facts and circumstances of the case, I do not find any ground to release the accused/applicant on bail. The bail application is hereby rejected.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.5.2000

BEFORE
THE HON'BLE SUDHIR NARAIN, J.

Civil Misc. Writ Petition No. 22871 of 1997

Sri Chandra Shekhar Prasad ...Petitioner
Versus
Special Judge/Additional District Judge, Ballia and others ...Opp. parties

Counsel for the petitioner:
Sri M.A. Qadeer

Counsel for the Respondents:
S.C.

Sri O.P. Gupta

Transfer of Property Act, 1882, S.114 - Applicability.
Held (para 6)

Section 114 enables the Court to grant the tenant relief against forfeiture for non-payment of rent. It applies to those cases where the land lord invokes his rights under a forfeiture clause under the agreement and determines the lease by the forfeiture and sues to eject the tenant on the ground of forfeiture of lease.
Case law discussed.
AIR 1961 AII 95
AIR 1966 AII 165
1994 AWC17

By the Court

1. This writ petition is directed against the judgement of the trial court dated 23.3,1996 decreeing the suit for recovery of arrears of rent, ejectment and damages and the order of the revisional court dated 23.4.1997 affirming the said order in revision.

2. Briefly stated the facts are that the petitioner had taken the shop in question from respondent no. 3 at monthly rent of Rs. 200/- for a period of 11 months. He had executed a rent note on 16th May 1993. The landlady-respondent no. 3 gave a notice on 10th August 1994 under section 106 of Transfer of Property Act terminating the tenancy of the petitioner and demanding arrears of rent alleged to be due since 15.4.1994. The petitioner did not comply with the said notice. She gave another notice on 19.9.1994 purporting to be under section 111 of the Transfer of Property Act stating therein that the tenancy was for a period of 11 months and the said period having expired, the petitioner was liable to deliver possession to her. As the petitioner did not deliver possession of the disputed shop to respondent no. 3, she filed suit no. 9 of 1994 in the court of Judge Small Cause Court, Ballia for recovery of arrears of rent, ejectment and damages. The petitioner filed written statement and denied that he had committed default in payment of arrears of rent. It was stated that the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short Act) were applicable and he was not liable for eviction. The trial court decreed the suit vide its judgement dated 23.3.1996 on the finding that the provisions of the Act were not applicable. The petitioner was liable to pay rent for the period since 16.4.1994 at the rate of Rs. 200/- per month. The petitioner preferred a revision against the said judgement. Respondent no. 1 has dismissed the revision vide impugned order dated 23.4.1997.

3. I have heard Sri M.A. Qadeer, learned counsel for the petitioner and Sri O.P. Gupta, learned counsel for the contesting respondent.

4. The main thrust of the submission of the learned counsel for the petitioner is that the suit was filed on the ground that the petitioner had not paid the amount as stipulated in the agreement but later on he having deposited the amount in the Court, his tenancy could not be forfeited and was not liable for eviction on that ground. It has been found by the courts below that the petitioner had executed a rent deed dated 15.5.1993 which provided that the tenancy was for a period of 11 months. There was no clause in the agreement that the lease will be forfeited in case the tenant failed to pay the rent. There is no dispute that the rent for the period of 11 months was paid by the tenant. The plaintiff-respondent had claimed the rent only for a period after expiry of the lease period i.e. for the period 14.4.1994 and till the date of filing of the suit.

5. Section 114 of the Transfer of Property Act is applicable when three conditions are satisfied. Firstly, there is an agreement of lease between the parties, secondly, there is a condition in the lease deed that the lease will be forfeited if the rent is not paid to the lessor in accordance with the conditions mentioned

in the lease deed and thirdly, the lease is forfeited by the lessor on the ground that the lessee has not complied with the terms of payment of rent as contained in the lease deed.

6. In Sardar Kartar Singh v. Smt. Phoolwati. AIR 1961 Allahabad 95, it has been held that section 114 of the Transfer of Property Act applied to the cases where the forfeiture relied upon by the plaintiff is one incurred under the terms of the lease. The scope of section 114 was explained in Riyasat Ali Khan v. Mirza Wahid Beg and another. AIR 1966 Allahabad 165, observing that the right of forfeiture is limited to cases where the tenant is guilty of some kind of misconduct as for example non-payment of rent. Section 114 enables the court to grant the tenant relief against forfeiture for non-payment of rent. It applies to those cases where the land lord invokes his rights under a forfeiture clause under the agreement and determines the lease by the forfeiture and sues to eject the tenant on the ground of forfeiture of lease.

7. Learned counsel for the petitioner has placed reliance upon the decision Surjeet Singh v. Additional District Judge, Haridwar and others, 1994 AWC 17, where the court granted relief against eviction where the tenancy was forfeited on the ground of non-payment of rent. This case has no application, as in this case there was an agreement of forfeiture of lease on the ground of non-payment of rent.

8. The petitioner has annexed a copy of rent note as Annexure-1 to the writ petition. In this rent note there is no forfeiture clause. It only states that the tenant shall be liable to pay rent at the rate of Rs. 200/- per month and after the expiry of the period of lease he will hand over possession to the land lord. The tenant paid the rent for the entire period of 11 months and there was no occasion to forfeit the lease on this ground.

9. The learned counsel for the petitioner further submitted that the plaintiff-respondent had sent notice terminating the tenancy under section 106 of the Transfer of Property Act and subsequently another notice under section 111 of the said Act. The termination of tenancy in both ways did not make any difference as regards the right of the plaintiff of treat the tenancy as determined under section 111 of the Transfer of Property Act. The tenancy can be determined on various grounds mentioned under section 111 of Transfer of Property Act. The tenancy can be determined under clause (a) by efflux of time limited thereby, by forfeiture under clause (g) and by serving a notice determining the tenancy or to quit under clause (h) of section 111 of the Transfer of Property Act. The plaintiff determined the tenancy under section 106 of the Transfer of Property Act and also issued another notice indicating that the tenancy has come to an end by efflux of time. The notice sent by the plaintiff did not indicate that the tenancy has been forfeited on account of non-payment of rent. The provisions of Section 114 of the Transfer of Property Act were, in these circumstances, not applicable in the case of the petitioner.

10. No other point has been pressed.

I do not find any merit in the writ petition. It is accordingly dismissed. The parties shall , however, bear their own costs.

APPELLATE JURISDICTION
CIVIL SIDE
DATED ALLAHABAD 3.5.2000

BEFORE
THE HON'BLE U.S. TRIPATHI, J.

First Appeal From Order No. 190 of 1994

Dinesh Singh ..Appellant/Respt.
Versus
District Judge, Ghazipur
and another ...Respondent

Counsel for the Appellant :
Sri Tarun Kumar Srivastava

Counsel for the Respondent :
S.C.

Code of Civil Procedure, 1908, S.151 and O.IX r.13 and O.XLIII r.1 (d) read with Motor Vehicles Act, 1988 S. 173 and M.V. Rules, 1998, R.221- Applicability- No appeal provided under the Act against ex-parte award- Maintainability of appeal- Inherent powers of Court, held, cannot be exercised.
Held (Para 15)

It was contended that even if there is no specific provision for appeal against an order rejecting the application for restoration of proceedings or setting aside ex-parte award under Motor Vehicles Act, the Court can entertain appeal in its inherent jurisdiction. But powers of appeal, review or revision, if not specifically provided under the Statute, cannot be assumed under inherent powers of the Court.
Case law discussed.
1998 (2) TAC 9 (A11)
1997 (88) RD 562

By the Court

1. This First Appeal From Order has been preferred under Order XLIII Rule 1 (d) C.P.C. against the order dated 6.8.1994 passed by the District Judge, Ghazipur acting as Motor Accident Claims Tribunal, rejecting the application of the appellant under Order IX Rule 13 C.P.C.

2. The learned counsel for the respondent no.2 raised preliminary objection regarding maintainability of appeal.

3. Heard the learned counsel for the parties on the question of maintainability of appeal.

4. The facts giving rise to this First Appeal From Order are that the respondent no.2 filed Motor Accident Claim Petition No. 31 of 1989 in the Court of Motor Accident Claims Tribunal/District Judge, Ghazipur, for grant of compensation on account of death of Smt. Bigni Devi in a motor accident, which took place on 5.5.1989 at 1.00 P.M. by vehicle no. DEP 3099. Notices to above claim petition were served on the appellant. He appeared before the Tribunal on 12.2.1992 but absented thereafter. Therefore, the Tribunal proceeded ex parte, vide order dated 26th November, 1992, The claimant adduced evidence and on considering his evidence, the Tribunal awarded a sum of Rs. 18,000/- as compensation against the appellant payabale alongwith interest at the rate of Rs. 9% per annum from 27.2.91 to the date of actual payment, vide judgement/award dated 7.1.1992.

5. The appellant on 28.10.1993 moved an application under Order IX Rule 13 C.P.C. for setting aside the above ex parte award on the grounds that petition was filed showing wrong parentage of appellant and he was not served with the notice. He came to know about the ex parte award only on 24th October, 1993.

6. The above application was registered as Miscellaneous Case No.238 of 1993. The Tribunal found that there was no sufficient ground for allowing the application. Consequently, it rejected it, vide order dated 6.8.1994.

7. Aggrieved with the above order, the appellant has come up in this First Appeal From Order.

8. The learned counsel for the respondents contended that appeal against award is provided under section 173 of Motor Vehicles Act, 1988, but this appeal has not been preferred against the award, but against the order rejecting the application for setting aside ex parte award, under order 43 Rule 1 (d) C.P.C. That the proceeding arose under Motor Vehicles Act, which is self contained Act. Under Motor Vehicles Rules, 1988 the provisions of Order 43 Rule 1 C.P.C. have not been made applicable to the proceedings

under Motor Vehicles Act and therefore, there is no provision under Motor Vehicles Act or Rules to prefer an appeal against the order rejecting the application for setting aside ex parte award and therefore, the appeal is incompetent.

9. On the other hand, the learned counsel for the appellant contended that since the provisions of Order 9 C.P.C. are applicable to the Motor Accident Claims Tribunal and therefore, remedy of appeal provided under C.P.C. against the rejection of application under Order 9 is also available.

10. It has been laid down in a catena of decisions of the Supreme Court and other High Courts that appeal, review or revision are creation of statute and no one has got inherent right to prefer an appeal, revision or review if it is not provided in the statute.

Section 173 of Motor Vehicles Act, which provides appeals reads as under:-

"(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court."

11. "Award" occurring in section 173 means award given under section 168 of Motor Vehicles Act i.e. after giving the parties an opportunity of being heard, holding an enquiry into the claims, or as the case may be, each of the claims, and subject to the provisions of section 162 made an award determining the amount of compensation, which appears to it to be just and specifying the person or persons to whom compensation shall be paid. Admittedly, the order against which this appeal has been preferred is not an "award".

12. Rule 221 of U.P. Motor Vehicles Rules, 1998 as well as Rule 21 of the Accident Claims Tribunal (U.P.) which make certain provisions of C.P.C. applicable to the proceedings under Motor Vehicles Act read as under :-

"The following provisions of the First Schedule to the Code of Civil Procedure, 1908. Shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Rule 9 to 13 and 15 to 30 of Order V, Order IX, Rules 3 to 10 of Order XIII, Rules 2 to 21 of Order XVI, Order XVII, and Rules 1 to 3 of Order XXIII."

13. The above Rules does not make Order XLIII Rule 1 C.P.C. applicable to a proceeding before Claims Tribunal. No doubt, provisions of Order IX of C.P.C. have been made applicable to the proceedings before Claims Tribunal and the appellant has admittedly availed that provisions before the Tribunal itself. Since, Order XLIII Rule 1 has not been made applicable by the statute to the proceedings arising before Claims Tribunal, no appeal lies against an order rejecting an application under Order IX Rule 9 or Rule 13 C.P.C. in respect of a proceeding arising out of Motor Accident Claims.

14. A Division Bench of this Court in a recent decision in **Lallu Bharati vs. Anwar, 1998 (2) T.A.C. 9 (All)** has clearly held that appeal filed against an order dismissing restoration application is not maintainable. A similar question was referred to the Full Bench of this Court in the case of **Smt. Shivraji and others versus Dy. Director of Consolidation, Allahabad and others, 1997 (88) R.D., 562** as to whether it is open for the Consolidation Authorities to review/recall their final orders exercising inherent powers even though the U.P. Consolidation of Holdings Act, 1953 does not vest with them any review jurisdiction. The Full Bench held that it is not open for the Consolidation Authorities to review/recall their final orders passed in a proceeding under the U.,P. Consolidation of Holding Act in exercise of inherent powers, as there is no provisions for review in U.P. Consolidation of Holdings Act

and the powers of review has to be specifically conferred and unless there is a provision in the Act permitting initiation of such proceedings, no review lies.

15. It was contended that even if there is no specific provision for appeal against an order rejecting the application for restoration of proceedings for setting aside ex parte award under Motor Vehicles Act, the Court can entertain appeal in its inherent jurisdiction. But powers of appeal, review or revision, if not specifically provided under the Statute, cannot be assumed under inherent powers of the Court.

16. In this way, the appeal in incompetent and is not maintainable. The appeal is, accordingly, dismissed with costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 4.5.2000

BEFORE
THE HON'BLE BINOD KUMAR ROY, J.
THE HON'BLE LAKSHMI BIHARI, J.

Civil Misc. Writ Petition No. 16424 of 1995

Diwan Singh & another ...Petitioners
Versus
The Sub Divisional Magistrate, Bagheshwar, District Almora & Others ...Respondents

Counsel for the Petitioners:
Shri S. Naithani
Shri L.P.Naithani
Shri Piyush Shukla

Counsel for the Respondents:
S.C.
Shri S.J. Yadav
Shri R. Dabhal

Constitution of India, Article226 read with Article 21- Serious dispute regarding exclusive supply of water Department already used to supply the water by two different modes- Court expressed its great concern- the authorities directed to take stringent steps if the flow of water is stopped by any body.
Held (Para 3)

No one can conceive survival of the human being and of even animals without water. In ensuring supply of water to both villages, we are of the view that the constitutional mandate, enshrined in Article 21 of the Constitution of India, is being followed, which is the avowed duty of the State and its officials under the Constitutional Ethos and Philosophy.

By the Court

1. The Petitioner No.1 is resident of Village Pangchora, Tehsil Bagheshwar in the District of Almora. Petitioner No.2 is a Society, named, Protection of पेय जल समिति, Kanda, Bageshwar. Both of them are aggrieved against the order dated 28.12.1993, passed by the Sub Divisional Magistrate, Bagheshwar (Respondent No.1), in अ.मु. जल प्रकरण वाद संख्या 131 of 92-93 (as contained in Annexure C.A. '1') and pray not to implement the said order, and to command the Sub Divisional Magistrate, Bagheshwar (Respondent No.1) to resolve the dispute, raised by the Petitioners and the affected persons after hearing them.

2. Having heard Shri L.P. Naithani, learned Senior counsel appearing on behalf of the Writ Petitioners, Shri Rajendra Dhobwal, learned counsel appearing on behalf of Respondent No.5, Gaon Sabha, Jethai, Shri H.R. Mishra, learned standing counsel appearing on behalf of Respondent Nos.1 and 2, Shri Sabha Jeet Yadav, learned standing counsel appearing on behalf of Respondent No.4 it transpires to us that there appears to be an extremely unfortunate dispute amongst the villagers of Villages Jethai and Pangchora in regard to supply of water. It is claimed by one or the other that the water should be supplied to one to the exclusion to the other. The stand taken by Shri H.R. Mishra as well as Shri Yadav on behalf of Respondent Nos.1,2 and 4 is that water is supplied now to

both villages through two different Projects and necessary orders have been passed by the Respondent No.1.

3. Article 21 of the Constitution of India guarantees right to life to the citizens as well as non-citizens of this country. The phrase 'the right to life' has been explained by the Hon'ble Supreme Court repeatedly to mean 'meaningful life'. No one can conceive survival of the human being and of even animals without water. In ensuring supply of water to both villages, we are of the view that the constitutional mandate, enshrined in Article 21 of the Constitution of India, is being followed which is the avowed duty of the State and its officials under the Constitutional Ethos and Philosophy. The orders to the contrary, if any, stand automatically modified by our aforementioned declaration of law and passing of this order.

4. Accordingly, we dispose of this Writ Petition with this direction to the State and its authorities including Respondent Nos. 1,2, and 4, to continue providing water to both villages and take stringent steps if anyone tries/attempts to stop flow of water to either of the two villages.

In the peculiar facts and circumstances, we make no order as to cost.

The office is directed to hand over a copy of this order, each to Shri H.R. Mishra as well as Shri Sabha Jeet Yadav both learned standing counsel, for its intimation to and follow up action by the appropriate authorities concerned.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.5.2000

BEFORE
THE HON'BLE A.K. YOG,J.

Civil Misc. Writ Petition No. 26081 of 2000.

Sheetal Prasad Kesharwani ...Petitioner (Tenant) (Defendant)

Versus

XVI Additional District and Sessions Judge, Kanpur Nagar and others ...Respondents (plaintiffs)

Counsel for the Petitioner:
Shri Deepak Jaiswal,

Counsel for the Respondents:
S.C.

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972,S. 21 (1) (a)- Release application- Earlier release order for another accommodation in favour of land lord could not be executed due to stay – Maintainability.
Held (Para 20)

Mere passing of release order will make no difference so long as land lords do not get possession and uncertainty prevails over this aspect. The contention of the petitioner fails on this score.

By the Court

1. This is a tenant's petition under Article 226. Constitution of India.

2. A release application (Parwati Tandon and others versus Sheetal Prasad Kesharwani)- Case No. 35 of 1993. was filed by the Landlords (contesting respondent No. 3 to 6) under Section 21 (1). (a). U.P. Urban Building (Regulation of Letting . Rent and Eviction) Act. 1972. U.P. Act No. XIII of 1972 for short called 'the Act 'contending that first Floor Portion of house No. 43 168 –B. Chowk Kanpur Nagar. comprised of two rooms and open space (8'x12') (called

accommodation in question) is in the tenancy @ Rs. 15/- p.m.

3. Release was claimed on the ground of their genuine, bona fide, personal need and also that their hardship was more as compared to that of the tenant.

4. Tenant- petitioner opposed release application primarily on the ground that the landlords had no valid title or right under law because 'Will' (executed by the erstwhile owner landlord Laloo Mal in favour of Smt. Ratan Devi – Predecessor in interest of Parwati Tandon and others did not permit property including accommodation in question to be partitioned. Laloo Mal had three daughters one of whom (Smt. Ratan Devi) was made executor of the Will. It is admitted to the parties that said Ratan Devi had executed a lease- deed in favour of Smt. Parwati Tandon. Respondent No. 3

5. Before the Prescribed Authority an application and an Affidavit –annexing a document (called Kabzanama dated 13.6.1994) was filed on 21.4.1997 (Annexure-7 to the Writ Petition) It was contended that the document (paper No. 82) may be read in evidence on the basis of the Kabjanama an attempt was made to show that landlord had acquired another accommodation. Execution of "Kabjanama" was admitted by landlords but in defence they contended that Kbjanama was got executed by way of security to protect the loan of Rs. 3,50,000- taken by them from one Smt. Shahanaz Begum and she got Kabzanama executed to protect realisation of her loan amount.

6. Learned counsel for the contesting respondents (had appeared as Caveator) place for perusal of this Court a certified copy of the order Sheet of Rent Case No. 35 of 1993. Petitioner had no objection to it. Order of 16th January 1997 this indicates that tenant had earlier filed an application (paper No. 68) for issuing commission to prove that house (subject matter of alleged' Kabzanama) had come in possession of the landlords. Prescribed Authority granted fifteen days time to the tenant to file a copy of the 'sale deed'. It is not disputed at the bar that 'Sale Deed' was never filed in spite of opportunity given to the tenant.

7. The Prescribed Authority vide order dated 21.4.1997 (Writ Annexure-7) held that there is no need for summoning Smt. Shahnaz Begum as witness as execution of 'Kabjanama' was not denied. The affidavit (paper No.82 Ga) was, however, taken on record as part of evidence.

8. Prescribed Authority vide judgment and order dated 29.11.1997 allowed the release application (Writ Annexure- 10)

9. Tenant filed Rent Appeal No. 3 of 1998 under Section 22 of the Act, which was dismissed vide judgment and order dated 17.2.2000 (Writ Annexure –13).

10. Heard learned counsels for the parties. Writ Petition is finally decided at the admission stage with the consent of the counsels.

11. Learned counsel for the petitioner argued that paper nos. 80 and 82, which were brought on record were part of the evidence but they have not been referred and considered by the two courts in their judgments and it is manifest error apparent on the face of record.

12. The Petitioner, however, failed to show anything from the memo of appeal or from the petition that these documents were at all referred to and relied upon at the time of hearing before the courts below. Tenant was evidently conscious of the fact that his theory of landlord's acquiring house on the basis of alleged 'Kabjanama' had no force and it was not worth canvassing before the Courts below in view of the landlord's defence that it was

merely by way of security to protect the loan taken by Parvati Tandon (Respondent No. 2) and that there was no sale-deed in favour of the landlords to prove acquisition of additional accommodation as alleged by the tenant. Perusal of the impugned judgment of the Prescribed Authority shows that tenant did not rely upon and did not press the said issue. There is no reference to the paper no. 80 and 82 in the said judgment.

13. Ground nos. 9 and 10 in Memo of appeal (Writ-Annexure-11) are to the effect that court below failed to take into consideration the papers and evidence filed by the appellant already taken on record and the court below failed to take into consideration the "entire material" on record. These grounds are vague. Particulars of said documents on record have not been given. There is no averment that paper nos. 80 and 82 have been ignored in spite of the fact that they were referred at the time of hearing and in fact issue was pressed. Tenant cannot be permitted to take advantage of his own wrong or lapse as an after thought and assail the judgment of the Courts below on a point which was not urged before them.

14. It is argued that the present release application was not maintainable as contesting respondents were not landlord on the ground that the contesting Respondents had no valid title or legal right with respect to the premises in question. Entire thrust, on the part of the tenant, has been to challenge the validity of the Lease Deed and to prove that Smt. Ratan Devi could not transfer the premises in question in breach of the "will". Learned counsel argued that a person who is not owner in law, cannot be 'landlord' under the Act.

15. In this context a reference was made to the definition of 'landlord' in Act and it is argued that the person to whom rent is payable means 'owner' who is entitled to receive rent in law.

16. It is well settled that 'landlord' need not be owner and that any person to whom tenant is under an obligation to pay rent (irrespective of the fact whether he is owner or not) is the landlord.

17. Ratan Devi having executed a lease deed in favour of present contesting respondents and entitled to receive rent from the tenants-their locus standi as 'landlord' cannot be challenged by the tenant on the allegation of infirmity in the 'lease deed'

18. Relying upon order dated 2.2.1999 in rent case no. 6 of 1999 (Satyendra Swaroop Saxena Versus Gopal Das), the Petitioner argued that one portion of the house (in the tenancy of one Gopal) has been released and, therefore, the present release application should not be allowed. This contention of the appellant has been considered by the appellate authority (particular page 108). There is no averment in the petition (see para 23 of the petition) that this order was promptly filed by the tenant before the court below. Moreover there is no averment that landlord had succeeded in getting de facto possession of the accommodation in the tenancy of said Gopal.

19. Sri Rajesh Tandon, counsel for the contesting respondents, on instructions of his client made statement before this court that release order has not been executed and landlord has not been able to take possession as yet because of stay order granted in revision. This fact has not been disputed or denied by the tenant.

20. Mere passing of release order will make no difference so long as landlords do not get possession and uncertainty prevails over this aspect. The contention of the petitioner fails on this score.

21. From the Copy of the order sheet referred to above placed by the learned counsel for the contesting Respondents, it is

clear that petitioner adopted delaying tactics before the Court below. On this score also it is not a fit case for interference under Article 226 Constitution of India.

22. No other point raised or pressed.

Writ Petition lacks merit.

Writ petition fails and accordingly dismissed.

ORIGINAL JURIDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.05.2000

BEFORE
THE HON'BLE A.K.YOG, J.

Civil Misc. Writ Petition No. 25591 of 2000.

Smt. Vimala alias Urmila. ...Petitioner.
Versus
The VIth Additional District Judge, Jhansi ...Respondents.

Counsel for the Petitioner:
Shri Harish Chandra Mishra

Counsel for the Respondents :
S.C.

Constitution of India, Article 226-power under-When not to be exercised.

Held (Para 10)

I find no manifest error apparent on the face of record warranting interference under Article 226, Constitution of India particularly when the Court below found that there was no necessity for issuing commission as issuing commission regarding age of the construction could be decided on the basis of the evidence led by the parties.

By the Court

1. This is Defendant's petition, who was tenant of a certain accommodation.

2. Plaintiffs Arun Kumar Khare and Anand Kumar Khare/Respondent Nos. 3 and 4 filed Suit No. 126 of 1996 (Annexure-1 to the Writ Petition). Defendant filed written statement.

3. Parties led evidence.

4. Defendant (Present Petitioner), however, filed an application dated 04th February 1999 for issuing commission to inspect the accommodation in question so as to submit his report regarding the age of the construction in question (Annexure-3 to the writ petition). Plaintiff filed objections (Annexure-4 to the Writ Petition).

5. Judge Small Causes Court considered the application for issuing commission (Paper no. 45-C) and considering the relevant circumstances and the objections raised by the other side rejected the said application vide judgment and order dated 13th May 1999 (Annexure-5 to the Writ Petition).

6. Defendant not being satisfied filed J.S.C. Revision No.3 of 2000 purported to be under Section 25, Small Causes Court Act. The said revision has also been dismissed by means of the impugned judgment and order dated 08th May 2000 (Annexure-6 to the Writ Petition).

7. Heard learned counsels for the parties and perused the averments contained in the Writ Petition and the grounds contained in Para 15 of the petition.

8. After hearing learned counsel for the petitioner, I do not find that the Petitioner can successfully establish any of the legal grounds contained in the Writ Petition.

9. At the very out set it may be mentioned the no revision lay under Section 25, Provincial Small Causes Court Act against an order refusing to issue commission.

10. I find no manifest error apparent on the face of record warranting interference under Article 226, Constitution of India particularly when the Court below found that there was no necessity for issuing commission as issuing commission regarding age of the construction could be decided on the basis of the evidence led by the parties.

11. The Trial Court has categorically observed at PP 20 of the Writ Paper Book that application 45 C was filed as a device to delay proceedings. No submission has been made on this aspect nor any explanation has come as to why application was filed at as belated stage.

It is, accordingly, dismissed.

12. In view of the above, Writ Petitioner lacks merits.

No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.05.2000

BEFORE
THE HON'BLE A.K.YOG,J.

Civil Misc. Writ Petition No. 23880 of 2000

Gur Sharan Singh Bhalla ...Petitioner
Versus
State of U.P. through the Collector, Kanpur ...Respondents

Counsel for the Petitioner:
Shri Shashi Kant Gupta

Counsel for the Opposite Parties:
S.C.

Indian Stamp Act, Ss. 33 A. 47, 61 and 62-An unstamped or deficiently stamped document, execution of which having been admitted by the parties, cannot render proceedings a dismal, when no prejudice is caused to rights of parties.

Held (Para 12)

If a document is not at all stamped or deficiently stamped, it will cause loss to the Government exchequer, and not to the party in litigation. If execution of a certain document is admitted it will not matter whether it is stamped or not.

Cases referred:
A I R 1961 SC 1655 (Pr.5, 10)
1996 A.C.J. 16.

By the Court

1. Gur Sharan Singh Bhalla (Petitioner) is the tenant of a shop on the ground floor of premises No. 126/13/151 Chandra Market, Govind Nagar, Kanpur on a rent of Rs.400/- per month on the basis of a 'memorandum of agreement' dated 11.10.1987 executed by the tenant and Pherumal (the landlord). Under 'memorandum of agreement' tenant was required to deposit Rs.20,000/-(Copy of 'memorandum' has been filed as Annexure-1A to the writ petition).

2. After serving notice, landlord filed J.S.C.C. Suit No. 25/95. Parties had opportunity to contest. The suit was decreed. S.C.C. Revision No. 26/99, under section 25 Provincial Small Cause Court Act was filed which is pending.

3. During pendency of the revision, tenant/petitioner filed an application dated 23.10.1999 raising objection on the ground that the Agreement (said to be memorandum of agreement) was not registered, hence it was not admissible in evidence and it could not be taken into account by the court below in view of section 33 A and section 47 Indian Stamp Act. Objections were filed by the plaintiff/respondent No.3. The Revisional Court, after hearing the parties, rejected the afore-mentioned application (paper No. 63 C) vide judgement and order dated 25.2.2000 (Annexure-IV to the writ petition).

4. Contesting respondent No.2 is represented by Sri M.L. Maurya Advocate

who had filed caveat application and accordingly the present writ petition is being finally decided with the consent of the parties at admission stage.

5. Perusal of the impugned order (Annexure-IV) shows, that the document (said to be a memorandum of agreement-Annexure-1A to the writ petition) was filed before the court of J.S.C.C. The said document was undisputedly admitted in evidence. No objection was raised from any corner. These facts are not denied by the petitioner before this Court

6. The Revisional Court dismissed the application on the ground that once a document was admitted in evidence it could not be ignored on the basis of the above provisions of the Indian Stamp Act.

7. The revisional Court has relied upon the decision reported in the case of Javer Chand and others Vs. Pukh Raj Surana A.I.R. 1961 Supreme Court 1655 (para 5). Supreme Court has been pleased to observe "that High Court was not correct in refusing to act upon the document which was not duly stamped In case said document were properly proved as required under law and their execution having been admitted by the defendant himself."

8. Learned counsel for the petitioner referred to the provisions of section 62 and 61 of Indian Stamp Act and relied upon a decision of learned Single Judge in the case of Dakkhi Lal Vs. The Judge, Small Causes Court District Allahabad and other, 1996 Allahabad Civil Journal 16. In para 8 of the decision, learned Single Judge observed that there are two lines of decisions taking contrary views. The learned Single Judge preferred the view holding that a document, if admitted in evidence consciously by court, then alone it can be said to have been admitted and if document is admitted in evidence, without being concious or aware that it was not duly stamped, the same can be ignored. The observations, made by the Supreme Court in the case of Javer Chand (supra) that in case execution of a document is admitted to a party it will not be proper for the court to ignore on the ground of section 33 of the Stamp Act, has not been referred to in the said judgment.

9. The learned Single Judge has referred to the decision of Javer Chand (Supra) (para 10) in support of the reasoning contained in the proceeding paragraph. It appears, notice of the learned Single Judge was not drawn to the above referred categorical observation of the Supreme Court in para 5 of the Judgment in the case of Javer Chand (Supra).

10. Para 11 and 12 of the Judgement in the case of Dakkhi Lal (Supra) high lights the distinguishing features of that case (as comparad to the case in our hand). In the case of Dakkhi Lal document was neither endorsed nor exhibited as required under Rule 4 of Order 30 C.P.C. The learned Single Judge observed that document was allowed to go in evidence by the court 'inadvertently'. Petitioner, in the present case, made no attempt to demonstrate that the document in question was not endorsed or exhibited. Rather exhibition is admitted.

11. In the instant case there is no material to indicate that document was admitted inadvertently.

12. If a document is not at all stamped or deficiently stamped, it will cause loss to the Government exchequer, and not to the party in litigation. If execution of a certain document is admitted it will not matter whether it is stamped or not. Even after a document, (which is deficiently stamped.) has been admitted it is always open for the court or the concerned party to bring this fact before the concerned Collector who may take appropriate action under the law including the Stamp Act to take care of the Exchequer by

impounding and realising deficient stamp duty, etc.

13. Parties having admitted execution of the document and the matter having been litigated before the Court below on merit, there is no point in rendering such proceedings a dismal, particularly when no prejudice is caused to any party so far as their rights are concerned.

14. Learned counsel for the petitioner next submitted on the basis of section 61 and argued that revisional court ought to have referred the document to the Collector. The submission is untenable on the facts of the case.

15. Averments contained in the plaint (writ Annexure-1) show that plaintiff no where stated that the document in question was a 'rent deed'. Plaintiff described and claimed it to be a 'memorandum of agreement.' Its execution is admitted to the parties. Question will be whether a 'memorandum' requires stamp equivalent to the stamp Duty required on a Rent-Deed. No attempt is made by the petitioner to show that Stamp duty under law on the two types of document is same and as to whether it is permissible under law.

16. There is another aspect of the case .J.S.C.C. Revision No. 26/99 is still pending and objections in peacemeal cannot be allowed to be raised to the defendant, it will ensure to check abuse of process of court by avoiding multiplicity of proceedings apart from the fact that very object of having expeditious decision under provincial Small Cause Court Act is otherwise frustrated. No right of the petitioner shall suffer in case document is not impounded.

It is not a fit case for interference under Article 226 of the Constitution of India. The writ petition is dismissed. No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 8.5.2000

BEFORE
THE HON'BLE R.H. ZAIDI, J.

Writ Petition No. 21508 of 2000

Fuzail Ahmad ...Petitioner
Versus
Commissioner, Allahabad Mandal Allahabad & Others ...Respondents

Counsel for the Petitioner:.
Shri Namwar Singh
Shri Sanjiv Singh
Shri Sudhir Singh

Counsel for the Respondents:
S.C.

Arms Act 1959, S.18 read with Arms Rules, R. 56 and Constitution of India, Article 226- Cancellation of fire arm licence- Appeal against – Summary dismissal without calling for the record or affording an opportunity of hearing- legality- Natural Justice.

Held (Para 8)

In the aforesaid order, neither the facts or the case have been noted nor the argument of the learned counsel for the petitioner nor any reason has been recorded and it has wholly arbitrarily been held that the appeal was not maintainable. No reason for the said conclusion has been recorded in the impugned order. Thus, The impugned order is wholly, illegal and is liable to be quashed.

By the Court

1. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 24.08.1999 whereby the Licensing Authority under the Arms Act cancelled the fire arm licence of the petitioner. Challenging the validity of the said order the petitioner preferred an appeal before the Commissioner, Allahabad

Division, Allahabad. The Commissioner dismissed the appeal holding that it was not maintainable.

2. Learned counsel for the petitioner submitted that the order passed by the Commissioner is wholly illegal. He should have applied his mind to the facts of the case and should have decided the appeal by means of reasoned order, after perusal of record. Learned Standing Counsel has only formally opposed this petition. He virtually conceded that the impugned order passed by the Commissioner was not a valid order.

3. As desired by the learned counsel for the parties, this petition is disposed of finally at this stage.

4. Section 18 of the Arms Act, 1959 provided as under:-

"18. Appeals- (1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a licence may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by, or under the direction of, the Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Indian Limitation Act. 1908 (IX of 1908) with respect to the computation of periods of limitation thereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fee as may be prescribed.

(5) In disposing of an appeal the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(6) The order appealed against, shall, unless the appellate authority conditionally or unconditionally directs otherwise, be in force pending the disposal of the appeal against such order.

(7) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final"

5. Sub section (5) of Section 18 provided that in disposing of the application, the appellate authority shall follow such procedure as may be prescribed and that no appeal shall be disposed unless the appellant is given a reasonable opportunity of hearing.

6. The procedure to be followed by the appellate authority in an appeal filed under Section 18 of the Act, noted above, has been prescribed under Rule 56 of the rules framed under the Act. The said rule reads as under:-

"56 Procedure to be followed by the appellate authority- On receipt of an appeal, the appellate authority may call for the records of the case from the authority who passed the

order appealed against and after giving the appellant a reasonable opportunity of being heard pass final orders."

7. From a reading of the aforesaid rule, it is evident that an appeal competently filed under Section 18 of the Act is to be decided on merits after affording an opportunity of hearing to the appellant and after perusal of the record of the case. There is no provision under the Act or the rules for dismissal of appeal summarily except of an appeal filed after the period of limitation without an application for condonation of delay or where the delay is not condoned. The appeal is to be decided on merits. In my opinion, the word 'may' in the aforesaid rule is to be read and construed as 'shall as the Commissioner/appellate authority is to decide the questions of law as well as of facts involved in the case. He can reverse the findings recorded by the District Magistrate/licensing authority and can record his own findings on the said question which will not be possible without perusal of record of the case. The appellate authority may confirm, modify or reverse the orders passed by the licensing authority appealed against on questions or law or facts. In the instant case, it has been stated that even the record of the case was not sent for by the Commissioner and the appeal was dismissed as not maintainable by passing a non speaking and sketchy order which is quoted below:-

"अपीलार्थी के विद्वान अधिवक्ता को सुना तथा जिलामजिस्ट्रेट द्वारा वाद सं0 77 श0लि0 में पारित आदेश दिनॉक 24-8-99 का अवलोकन किया गया । जिला मजिस्ट्रेट, इलाहाबाद द्वारा पारित विवादित आदेश तर्कसंगत एवं नियमानुसार है जिसमें हस्तक्षेप करने का कोई आधार नहीं है । अतः अपील ग्राहय नहीं की जानी है ।"

8. In the aforesaid order, neither the facts of the case have been noted nor the argument of the learned counsel for the petitioner nor any reason has been recorded and it has wholly arbitrarily been held that the appeal was not maintainable. No reason for the said conclusion has been recorded in the impugned order. Thus, the impugned order is wholly illegal and is liable to be quashed.

9. In view of what has been stated above, the writ petition succeeds and is allowed. The impugned order dated 07.03.2000 passed by the respondent no.1 is hereby quashed. Respondent no.1 is directed to decided the appeal afresh in the light of the observations made above and after following the procedure prescribed for the same within one month from the date a certified copy of this order is communicated to him.