Bombay High Court
4A vs Hindustan Petroleum Corporation ... on 13 August, 2009
Bench: A.M. Khanwilkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 808 OF 2009
ALONG WITH
WRIT PETITION (LODGING) NO. 810 OF 2009

WRIT PETITION (LODGING) NO. 808 OF 2009

Abhishek s/o Vidya Nand Singh)

4A, Ram Niwas, Collector's Colony)
Chembur, Mumbai 400 074.
ig).. Petitioner

VERSUS

Hindustan Petroleum Corporation Ltd.)
having its Registered Office at 17,)
Jamshedji Tata Road, Mumbai 400 020.).. Respondent

ALONG WITH
WRIT PETITION (LODGING) NO. 810 OF 2009

Prakash Raghunandan Niranjan)
Hindu Adult, Indian Inhabitant)
Aged 26 Years, Occ.: Service)
R/o CWM, Traction Machine Workshop)
RB 3, 310/A, Eklahara Road, Nasik Road)
Nashik 422 101.).. Petitioner

VERSUS

1) M/s. Hindustan Petroleum Corporation)
Limited, A Government of India Enterprise)
Having its registered office at Petroleum)
House, 17 Jamshedji Tata Road,)
Mumbai 400 020.)

2) The General Manager)
Human Resources Department)

M/s Hindustan Petroleum Corporation)
Limited, A Government of India Enterprise)
having its registered office at Petroleum)

House, 17, Jamshedji Tata Road,)
Mumbai 400 020.).. Respondents

Mr. S.C. Naidu i/b C.R. Naidu & Co. for the Petitioner in Writ Petition (Lodging) No. 808 of 2009.

Mr. P.B. Shah i/b Vivek Salunke for the Petitioner in Writ Petition (Lodging) No. 810 of 2009.

Mr. M.D. Siodia i/b Rustomji Y. Ginwala for the Respondents in

both the Writ Petitions.

CORAM : SWATANTER KUMAR, C.J. AND
A.M. KHANWILKAR, J.

JUDGMENT RESERVED ON : 29TH JULY 2009

JUDGMENT PRONOUNCED ON : 13TH AUGUST 2009

JUDGMENT (PER SWATANTER KUMAR, C.J.)

Rule in both the Writ Petitions. Rule made returnable forthwith. By consent of the parties, Writ Petitions taken up for final hearing and disposal.

2. Vide letter dated 20th February 2009, services of Officer Trainee (Abhishek Vidya Nand Singh, Petitioner in Writ Petition (Lodging) No.808 of 2009) working in the Technical Department of Hindustan Petroleum Corporation Limited at Mumbai Refinery were terminated on the ground that he had furnished incorrect information and secured the employment.

The letter reads as under :-

> "Shri Abhishek (Exm.No.31938480) February 20, 2009 Officer Trainee Technical Department HRD/RECT/OT Mumbai Refinery Terimination of Services Hindustan Petroleum Corporation Limited (Government of India Enterprise) had published an advertisement in Dec' 07, whereby applications were invited for the position of Officer Trainees. All candidates having 60% and above marks as aggregate (50% and above for SC/ST candidates) in the qualifying degree were eligible to apply subject to fulfilling other eligibility norms.
>
> Now, it has been observed that, in your `on-line- application' and `Application for Employment' you have furnished that you have secured 62.78% as aggregate in the qualifying degree. However, you have actually secured 55.78% as aggregate in the qualifying degree.
>
> Thus, you have furnished incorrect information and secured the employment.

Since you have furnished false/incorrect information with regard to the marks secured by you in the qualifying degree, your services are hereby terminated with immediate effect, as provided for under Clause No. 10 of the employment letter ref. HRD/RECT/OT dated 10th June '08.

Sd/-

Acknowledgement D.K. Deshpande
Executive Engineer-HRD"

3. This letter was acknowledged by the Petitioner under protest and stating that the averments made in the letter were incorrect and he was accepting the letter under protest with a further prayer to the authorities of the Respondent Corporation to review the case in light of the facts and Mumbai University Rules.

However, the Respondent Corporation declined to consider the matter any further resulting in filing of the present Writ Petition.

4. Prakash R Niranjan (Petitioner in Writ Petition (Lodging) No.810 of 2009) filed the Petition apprehending that his services are likely to be terminated in a similar fashion. In fact, his services were terminated subsequent to the filing of his Petition by letter dated 20th April 2009 on the ground that he had furnished false/incorrect information with regard to marks secured in the qualifying Degree.

5. Both the Petitions challenge the identical letters of termination on somewhat similar facts. Thus, it will be appropriate to dispose of both these Writ Petitions by a common judgment as not only they are based on somewhat similar facts but raise common questions of law.

6. The challenge to the letter of termination dated 20th February 2009, by the Petitioner Abhishek Vidya Nand Singh, inter alia, is on the following grounds :-

(a) The order of termination is violative of principles of natural justice as no opportunity was granted to show cause and reasons were not given and at no point of time the Petitioner was granted appropriate opportunity to show cause or put forth his point of view based on Rules and Regulations of the concerned Universities. Thus, the order is vitiated for want of hearing in any form known to

law.

(b) With reference to the advertisement and the Rules of the Mumbai University, the Petitioner has neither made any mis-representation nor has furnished incorrect information to the Respondent Corporation. Thus, there is no justification for passing of the impugned order of termination.

(c) The records including the application form of the Petitioner had been duly verified by the authorities before even he was called for interview and the declarations made in the application were duly accepted by the authorities and the Petitioner was found to be eligible. The Respondents thus are bound by their conduct and are estopped from taking any other stand and act to the prejudice of the Petitioner.

(d) Lastly, it is contended that the Petitioner had completed his training period on 13th February 2009 and thus his services could not be terminated simplicitor by the order and the Respondent Corporation was obliged to hold regular departmental enquiry in accordance with the relevant provisions of Conduct, Discipline and Appeal Rules and could not have terminated the services of the Petitioner in an arbitrary manner.

Identical grounds of challenge are raised regarding letter of termination dated 20th April 2009 issued to the Petitioner Prakash Niranjan.

7. Before dealing with the merits or otherwise of these contentions, we may refer to the necessary facts giving rise to the present Writ Petitions. For the purpose of convenience, we are referring to the facts in Writ Petition (Lodging) No. 808 of 2009.

The Petitioner obtained his Bachelor's degree in Mechanical Engineering while securing 62.78% marks and was conferred with the Degree on 12th December 2005. On 29th December 2007 advertisement appeared in the "Employment News" in terms of which the Respondent Corporation invited applications for prospective candidates for the post of "Officer Trainees" in different Engineering disciplines. The Petitioner applied for the said post by submitting his application on-line. Admit Card was issued to the Petitioner for appearing in the written test at New Delhi Centre which test he qualified successfully and was directed to appear for personal interview on 19th March 2008. The Petitioner was interviewed on 22nd April 2008 and all the documents including the original documents were examined by the competent authorities of the Respondent Corporation. After being satisfied, the Petitioner was directed to appear for the medical check-up. Having cleared all these procedures, the Petitioner was informed by e-mail dated 4th June 2008 that the Petitioner had been selected and was directed to attend the induction programme i.e. Samavesh camp which the Petitioner attended. There again the candidates were called upon to come turn by turn with their original documents before a panel of Senior Officers of the HR Department of the Respondent Corporation.

After the said authorities were satisfied and all necessary credentials were verified, the Petitioner was offered the appointment vide letter dated 10th June 2008 appointing him as an Officer Trainee. During his training programme, he was posted in various Departments and, according to the

Petitioner, he successfully completed the training programme and while he was performing his duties at Mumbai Refinery, he was called by the Chief Manager, HR Department. During that meeting on 27th January 2009, he was asked to tender resignation on the ground that he had misrepresented the percentage of marks secured by him in qualifying examination. The Petitioner attempted to convince the said authority that the marks obtained by him in the VII and VIII Semesters are to be counted for qualifying examination and that he had secured 879 marks out of total 1400 marks and the percentage work out to 62.78% exactly and he had made no mis-representation.

8. On 28th January 2009, the Petitioner approached the Mumbai University and received the Ordinance and Regulation relating to Degree of Bachelor of Engineering in Mechanical course. Attempt of the Petitioner to show the Ordinance to the Respondent authorities brought no results and he was all throughout pressurized to tender resignation or else was threatened to be terminated. On 25th February 2009, the Petitioner submitted a representation facing the threat of termination.

According to the Petitioner, without referring any reasons and in an arbitrary manner on 27th February 2009 his services were terminated by issuing a back dated letter which he received under protest. Though the letter of termination was dated 20th February 2009 the same was served on him on 27th February 2009 compelling the Petitioner to resign. In light of these facts, the Petitioner also got further information from the Mumbai University under the provisions of the Right to Information Act, 2005 and he submitted a detailed representation on 4th March 2009 to the Respondents and still another representation dated 31st March 2009 addressed to the Chairman and Managing Director of the Respondent Corporation but of no help and result. On these premise, the Petitioner has challenged the action of the Respondent Corporation as being arbitrary, violative of principles of natural justice, against the Rules and in violation of Articles 14 and 16 of the Constitution of India.

9. First and the foremost question that would require some deliberation and consideration by the Court is the interpretation and scope of the advertisement which is the very foundation of the dispute between the parties. The relevant clause reads as under :-

> "Candidates scoring with 60% & above marks (for SC/ST - minimum 50%) in the qualifying examination are eligible to apply.
>
> Candidates possessing Engineering/Technology Degrees in CORE DISCIPLINES (Civil Chemical, Electrical, Instrumental and Mechanical) ONLY would be considered.
>
> Those candidates who will be appearing for their Final Year Examination by July, 2008 and awaiting their results can also apply. On the date of application, Candidates must have minimum 60% marks (For SC/ST
>
> - minimum 50%) in aggregate till the last semester to be eligible to apply. (However, their eligibility for the selection will be subject to their obtaining 60% & above marks

(for SC/ST-minimum 50%) in aggregate in qualifying degree."

10. According to the learned Counsel appearing for the Petitioners, the above clause contains two different class of persons who could apply, namely, (i) who possess the Bachelor of Engineering degree in different disciplines, and (ii) who were still to appear for their final year examination by July 2008 and the advertisement contemplates different criteria of eligibility for these two classes. The contention is that the candidates who had passed the course were required to have at least 60% and above marks in the qualifying examination in Core discipline while for SC-

ST it was 50%. The candidates who were still to take the examination and were awaiting their results, could also apply but on the date of the application they must have minimum 60% of marks in aggregate till the last semester to be eligible to apply.

However, their eligibility for selection was subject to their obtaining 60% and above marks in aggregate in qualifying examination. According to the Petitioners, therefore, the persons who had already obtained an Engineering degree were expected to have 60% marks in their Core discipline i.e. in the degree course and not aggregate of all the semesters from first year to the last year as there is no such practice nor the Rules of the University require the same. On the contrary, the learned Counsel appearing for the Respondent Corporation contends that the clause in the advertisement is a consolidated one and there is no distinction between different categories of applicants. Everybody has to obtain 60% or above marks and 50% in the case of SC/ST as an average of marks obtained in all the semesters.

11. Usefully reference can also be made to certain documents which would help the Court in analysing this clause in a better and more practical perspective. The Corporation had issued interview letters for Officer Trainees and under the heading "Essential Documents for Personal Interview", required the candidates to bring along with them the documents at the time of interview. Clauses 4 and 5 of that letter are of some relevance.

The same read as under :-

> "4. Final Year Mark-sheet and Provisional or Degree/Post- graduate Degree Certificate towards proof of having passed the requisite B.E./B.Tech/M.E./M.Tech Degree/Post-graduate Degree Examination in the respective CORE DISCIPLINE with minimum 60% Marks (For SC/STs-minimum 50% Marks) in the qualifying Degree.
>
> 5. The candidates who will be appearing in their Final-year Degree/Post-graduate Degree Examination in April/May 2008 will also be interviewed, provided they have secured minimum 60% Marks (For SC/STs- minimum 50% Marks) in aggregate till the last semester.
>
> Further, their Eligibility for Final Selection will be subject to their obtaining minimum 60% Marks (For SC/STs - minimum 50% Marks) in aggregate in the

qualifying Degree."

12. After selection, "Appointment position-Officer Trainee"/ appointment letters were also issued to the successful candidates and it had stated under clause 16(b) that a candidate should produce the original certificate in support of date of birth, educational qualifications (i.e. mark-sheets/degree certificate).

The clause in the advertisement, without infringement of any settled canons of interpretation of documents, can safely be disected into two classes (i)the candidates who have passed and

(ii) candidates who still have to take their final examination in July 2008 and may also be awaiting their result as on the date of the application. We are unable to accept the contention of the Respondent Corporation that it is a common or a composite class which is universally applicable to all applicants. Surely, the candidates who have already obtained their degree and otherwise satisfy the conditions stipulated in the advertisement including age etc., will be a class apart from the candidates who have still even to take their final examination. Even from common prudence point of view these two classes can hardly be clubbed together. If that was not the intent of the authorities concerned, there was no reason for them to point out in bold letters the two different classes and then to provide their eligibility conditions in smaller print. The design of the advertisement thus supports the idea of formation of two classes of applicants. The applicants are expected to possess a degree in core discipline having degree in Civil, Chemical, Electronics, Instrumentation and Mechanical Engineering only. Besides this, they are required to have secured 60% and above marks in their qualifying examination which will make them eligible. It is of some significance that neither the bold nor the ordinary print of the first clause uses the word "aggregate"

any where. It only uses the expression "qualifying examination".

Absence of that expression from the first clause of the advertisement itself is an indicator that the authorities inviting the applications never intended to apply the 60% aggregate concept to the candidates falling in first clause. It will be unfair and to some extent even impermissible to implant or read the expression "aggregate of all semester" into the first clause applicable to first category of candidates as specified in the advertisement.

13. The second class of applicants are those who have to still appear in their final examination and are awaiting their results. On the date of the application those candidates must have 60% and above marks in aggregate till the last semester to be eligible to apply, which means the last semester in which they have already appeared. This eligibility criteria is applicable only to the persons who have not taken their final examination or whose results are still awaited. They ought to have secured in aggregate i.e. right from first to the last semester 60% marks in aggregate.

This will make them eligible to apply but still not eligible for selection. The candidates who have still to pass their final examination if do not have 60% marks aggregate of all the Semesters including the last for which they have already appeared, they are not even eligible to apply for the post in question. Securing 60% marks in the qualifying examination that too in the core discipline is the

condition precedent for making the first kind of applicants eligible to apply. In clause 4 of the letter inviting the applicants for interview, it has been further clarified that final year mark-sheet and provisional or Degree/Post-graduate certificate towards proof of having passed the requisite B.E./B.Tech etc in the degree examination in core discipline with 60% marks in the qualifying examination has to be produced at the time of interview. This requirement was to be satisfied before they can be selected for the post of Officer Trainee.

14. The qualifying examination in the core discipline means the final examination after which degree is awarded to an applicant in terms of the Statute, Ordinance, Rules and Regulations of the University. It will hardly be permissible to go behind the degree. The University is a creation of a statute and in terms of such law, it has the authority and jurisdiction to issue degrees, diplomas and such certificates to the successful candidates in various fields. Once such a degree is issued then the employer can hardly impose limitations which will frustrate statutory force of the degree, unless there was unambiguous and clear stipulation in the advertisement inviting applications for employment of candidates who not only have the degree but their entire course percentage of marks is above 60% which will be counted for determining the percentage of marks specified in that advertisement. The expression "qualifying examination" again will be within the power, ambit and jurisdiction of the University. What will be the final examination of a degree course which in turn would be the qualifying examination is again to be ascertained and defined by none other than the University itself. In the present case, the applicants had under the Right to Information Act written to the University seeking information about which semesters were to be considered as the qualifying examination for awarding degree and the Rules/Regulations/Ordinances in respect of the same. This query was made by the Petitioner vide letter dated 3rd March 2009 and it was replied to by the University on 30th March 2009. The reply reads as under :-

> " University of Mumbai Examinations Section No.Exam./Engg/2348 of 2009 Engineering Unit Mumbai-98, 30th March, 2009 M.J. Phule Bhavan Vidyanagair Santacruz (West) MUMBAI 400 098.
>
> Shri Abhishek S/o Vidya Nand Singh 4A; Ram Niwas Collector's Colony, Chembur MUMBAI 400 074.
>
> Ref.: Application under rule 6 of The Right to Information Act, 2005.
>
> Sir, This has reference to your application under the Right to Information Act, 2005 dated, 3rd March, 2008 asking the information on point 3(iii) (i)(ii) & (iii).
>
> 3.(iii) (i) for B.E. (Mechanical), which semesters are considered as the qualifying examination for awarding degree and the rules/Regulation/ Ordinances in respect of the same.

Ans. B.E. (Mechanical) (Sem. VIII) is qualifying examination for awarding degree (Copy of the statutes enclosed).

(ii) Whether the percentage obtained by the student for purpose of B.E. (Mechanical) Degree examination is to be computed on the basis of grand total of marks obtained by the candidate in the VII & VIII semesters taken together ?

Ans. Yes.

(iii)

Is it the practices in Mumbai University to take the aggregate of marks obtained by the candidate appearing for B.E.

(Mechanical) Degree examination of I to VIII Semesters and then computing percentage.

If so then the rule therefore and the methodology for the same.

Ans. No. There is no such rules and the

methodology for the same.

The Registrar, Principal K. Venkatramni,

University of Mumbai is appellate authority whose address and telephone no. is as under :

Principal K. Venkatramni The Registrar University of Mumbai Fort Office, First Floor MUMBAI 400 032.

Telephone No. 2270 2344, 2265 6953.

Yours faithfully Sd/-

Prof. Vilas B. Shinde (Information Officer & Controller of Examinations)"

15. Furthermore, the Ordinances and Regulations relating to the degree of Bachelor of Engineering of the Mumbai University were also placed on record and referred to during the course of arguments. In O.3703 it has been stated that Bachelor of Engineering (B.E.) degree course is of four years and each year consists of two semesters. First year Engineering (F.E.) course consists of Semester I and II; Second year Engineering (S.E.) course consists of Semester III and IV; Third year Engineering (T.E.) course consists of Semester V and VI and Final year Engineering (B.E.) course consists of Semester VII and VIII.

16. O.3714 is an ordinance relating to examination which clearly states that the candidate would be required to pass eight semester examinations to qualify for the award of the degree of Bachelor of

Engineering. The First and Second Semester examinations will be called First Year Engineering (F.E.); Third and Fourth Semester examinations together will be called the Second year Engineering (S.E.) examination; the Fifth and Sixth Semester examination together will be called Third year Engineering (T.E.) examination while the Seventh and Eighth Semester examination together will be called the Final year Engineering (B.E.) examination.

17. R. 3902 clearly states that successful candidates who secure 70% or more of the total marks in Seventh and Eighth Semester examination taken together at one sitting only will be deemed to have passed the Final year B.E. Degree examination in First Class with Distinction and if they obtain 60% or more marks, they would be deemed to have passed the Final year B.E. Degree examination in First Class.

18. Another aspect which will provide an insight into this aspect is that under O.5287, the candidates who have passed Bachelor of Engineering (Full-time and/or Part-time) and who wish to improve their class of percentage of marks would be permitted to appear again for the same examination with same subjects (all subjects of Semester Seventh and Eighth theory and oral together) without being required to keep any term again. Thus, the scheme of the Statute of Mumbai University from where both the Petitioners have passed their degree examination clearly shows that it is the Seventh and Eighth Semesters which is determinative for issuance of degree of Bachelor of Engineering in all the core disciplines. The cumulative effect of reading the above Ordinance and Regulations conjunctively is that the degree which is the qualifying examination shall primarily consist of 7th and 8th Semesters and securing of 60% marks in terms of the advertisement ought to relate to the final examination of the degree course. Such interpretation would be in consonance with the language of the Statute of the University as well as would satisfy the object of interpreting the first clause of the advertisement.

19. Firstly, there is no ambiguity in the language of the advertisement, but even if it is assumed that the relevant clause of the advertisement admits some element of uncertainty or ambiguity in regard to the qualifying examination and scoring of 60% marks whether in the degree examination or on an average of all the Semesters, it will be appropriate to take the approach which we have adopted for interpreting the meaning of a doubtful word by ascertaining it with reference to the meaning of words associated with it. "Noscitur A Sociis" is a known maxim that is applied to such situation. The Court cannot give meaning to the clause in the advertisement which will be in apparent conflict with the Statute of the University and would also defeat the very distinction clearly stated in the advertisement between the candidates who have already passed the degree examination and the ones who still have to take the final examination and whose results are awaited. The words in the advertisement should be understood in their proper perspective and the words must be read and understood together with reference to the degree as quoe non valeant singula juncta juvant.

20. Ambiguity in written instruments can be settled by taking into consideration meaning of express words and intent of the parties. Both these ingredients will obviously be applied in consonance with the laws attendant to such document. In the case of Mohd. Riyazur Rehman Siddiqui v Deputy Director of Health Services and others, 2008 (6) Mh. L.J. 941, a Full Bench of this Court while applying the rule of "plain construction" observed as under :-

> 51. A statute is stated to be a will of the Legislature. It expresses a will of the Legislature, and function of the Court is to interpret the document, according to the intent of them that made it. It is a settled rule of construction of statute that the provisions should be interpreted with application of plain rule of construction. The courts normally would not imply anything in them which is inconsistent with the words expressly used by the statute. In other words, the Court would keep in mind that its function is jus dicere, not jus dare. The right of appeal being creation of a statute and being a statutory right does not invite unnecessary liberal or strict construction. The best norm would be to give literal construction keeping the legislative intent in mind.

52. The Supreme Court in the case of Shiv Shakti Co-op. Housing Society, Nagpur vs Swaraj Developers and Others, reported in (2003) 6 SCC 659, while referring to the principles for interpretation of statutory provisions, held as under:

> "19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse.) ig The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v.
>
> Spooner courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See Stock v. Frank Jones (Tipton) Ltd.] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. In Vickers Sons and Maxim Ltd. v. Evans, quoted in Jumma Masjid v. Kodimaniandra Deviah.)"

53. The Law Commission of India, in its 183rd Report, while dealing with the need for providing principles of interpretation of statute as regards the extrinsic aids of interpretation in General Clauses Act, 1897 expressed the view that a statute is a will of legislature conveyed in the form of text. Noticing that process of interpretation is as old as language, it says that the rules of interpretation were evolved even at a very early stage of Hindu civilization and culture and the same were given by `Jaimini', the author of Mimamsat Sutras, originally meant for srutis were employed

for the interpretation of Smrities also. While referring to the said historical background, the Commission said thus: -

"It is well settled principle of law that as the statute is an edict of the Legislature, the conventional way of interpreting or construing a statute is to seek the intention of legislature. The intention of legislature assimilates two aspects; one aspect carries the concept of `meaning', i.e., what the word means and another aspect conveys the concept of `purpose' and `object' or the `reason' or `spirit' pervading through the statute. The process of construction, therefore, combines both the literal and purposive approaches. However, necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the Supreme Court in R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684 has held:

> ".....If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self defeating."
>
> Recently, again Supreme Court in Grasim Industries Ltd. v. Collector of Customs, Bombay, (2002)4 SCC 297 has followed the same principle and observed:
>
> "Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions."
>
> 54. Above stated principles clearly show that the Court can safely apply rudiments of plain construction to legislative intent and object sought to be achieved by the enactment while interpreting the provision of an Act. It is not necessary for the Court to implant or exclude words or over emphasize the language of a provision where it is plain and simple."

21. Lord Wensleydale while referring to construction of documents stated as follows :-

> "In construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, and inconsistency, but no further".

(Reference : Principles of Statutory Interpretation by Justice G.P.

Singh, 11th Edition 2008).

22. In light of the above principles, we must examine the advertisement along with other clauses in letter of interview and appointment. The intent of the parties as is clear from the documents and more particularly the Statute and Regulations of the University which had issued the degree in question are the most relevant factors. In any case it is always better to have ordinary and popular meaning which could go in line with the object to provide criteria of eligibility. Though it is a facet which falls in the domain of the authority inviting the application for employment, but the authority cannot alter the statutory background of the degree in a course. The authorities had clearly spelt out two different categories and the second clause about average 60% marks in the Semesters including the last Semester for which the candidate had appeared but had not taken the final examination is applicable to the candidates who had not completed their Engineering course while the first clause was restricted to the persons who had already passed and obtained a degree in core discipline stated in the advertisement. The eligible candidates do not form a common group and real intention of the advertisement was to regulate them and render them eligible on different criteria as on the date of the application. It is apparent that the Petitioners belong to the first category. Thus, in our view, the Respondent Corporation was not justified in terminating the services of the Petitioners who were holding degrees prior to the date of advertisement and, therefore, belong to first category mentioned in the advertisement. The approach of Respondent Corporation is based upon mis-reading and mis-construction of the relevant clause of the advertisement.

23. It is contended that there has been violation of principles of natural justice in passing the orders of termination dated 20th February 2009 in case of Petitioner Abhishek Vidya Nand Singh and dated 20th April 2009 in case of Prakash R.

Niranjan. It is not in dispute before us that no show cause notice was served upon the Petitioners before their services were terminated. However, relying upon the averments made in the Writ Petitions, the learned Counsel appearing for the Respondent Corporation contended that they admit that the Petitioner Abhishek was called by the Officer of the Corporation on 27th January 2009 and he was asked if he was willing to resign and ultimately the impugned orders of termination were issued.

According to the Petitioner Abhishek in Writ Petition (Lodging) No. 808 of 2009, he was called by e-mail dated 22nd January 2009 and he met the Chief Manager, H.R. Department on 27th January 2009 wherein he was told that he should resign as he had mis-

represented the percentage of marks of his qualifying examination. Though, according to the Petitioner, he had informed that marks obtained in the 7th and 8th Semesters are to be taken into consideration and he had secured 879 marks out of 1400 marks and the percentage was 62.78% exactly and thus there was no mis-representation, his contention was not accepted and no opportunity was given to him to produce the relevant documents including the Statute of the University and in an arbitrary manner the letter of termination was served upon him on 27th February 2009, though the same was prepared on 20th February 2009, as he refused to resign.

24. The principles of natural justice are applicable to every such situation. Wherever they are not specifically provided they will be read into the provisions and wherever an authority is desirous of

passing any order of civil consequences against its employee, it is expected that it would give at least a reasonable opportunity to show cause why order of such serious consequence may not be passed against him for reasons stated in such letter.

Admittedly, no such letter was issued and this attitude of the Respondent Corporation can hardly be explained in the facts and circumstances of the case. The letter of termination is dated 20th February 2009 but it was served upon the Petitioner on 27th February 2009. Why the Respondent authority couldn't ask the Petitioners to explain their conduct about the alleged mis-

representation of percentage of marks is a matter which has been left to one's imagination as there is no explanation for the same in the reply affidavit or even forwarded during the course of argument.

25. The applicability of principles of natural justice is not a mere formality. In fact there has to be adherence to these principles in fact and apparently they should have been seen to be applied in their proper perspective. A Division Bench of Delhi High Court in the case of International Cargo Services v. Union of India & Anr., 120 (2005) Delhi Law Times 195, after referring to various judgments of the Supreme Court, held as under:-

> "7. The principles of natural justice have twin ingredients. Firstly, the person likely to be adversely affected by the action of the authorities should be given notice to show cause or granted reasonable opportunity of being heard in consonance with the maxim audi alteram partem. Secondly, the order so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of these principles normally would render an order particularly quasi-judicial in nature invalid. Violation of principles of natural justice is violation of basic rule of law and would invite judicial chasticism. However, this rule is not without exceptions. Of course, the exceptions to such a rule are rare. Where the legislative scheme of provisions of a statute suggest that intent of the Legislature is to take emergent action, in that event and subject to fulfilment of ingredients of the provisions, an order could be passed without affording pre-decisional hearing and an expeditious post-decisional hearing may amount to substantial compliance with the basic rule of law. .....
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> xxx xxx xxx
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> 12. It is true that in administrative action, vesting the person of civil consequences, the principles of natural justice should be adhered to. In the case of M/s. Raj Restaurant and Anr. v. Municipal Corporation of Delhi, (1982) 3 SCC 338, the Supreme Court held as under:
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> `Wherein in order to carry on business a licence is required, refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the livelihood of the person. In such a stituation before either refusing to

> renew the licence or cacelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must. In the present case, no such opportunity was given before taking the decision not to renew the licence. The action disclosing the decision being in violation of the principle of natural justice, deserves to be quashed."
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> 26. Similarly, in the case of National Organic Chemicals (RCD) Limited and another vs Pandit Ladaku Patil, 2009 (1) Mh.

L.J. 83, a Bench of this Court also clearly stated that while applying the rule of audi alteram partem (the primary principle of natural justice), the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them. In disciplinary proceedings, fairness and prejudice are the concepts of some significance. Non-compliance of the procedure or the principles of natural justice would vitiate the action. Furthermore, there has to be substantial compliance to the principles of natural justice and not as a mere formality. Departmental actions are to be tested on the touchstone of justness and fairness and there should be adherence to principles of natural justice.

27. An inbuilt effect of compliance of principles of natural justice is to restrict the abuse of power and to ensure greater transparency into disciplinary actions. These principles are not static but would vary with reference to the facts and circumstances of a given case. In the case of Canara Bank and others v Debasis Das and others, (2003) 4 SCC 557, the Supreme Court observed in regard to application of principles of natural justice and of their adherence as per the conscious of the man in the following words :-

> "13. Natural justice is another name for common- sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted consideration which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.
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> 14. The expression "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence."

28. We are unable to understand why a show cause notice was not served upon the Petitioners before passing the impugned order. If the Respondent Corporation could call one of them to issue a command only to resign, they could have in normal circumstances issued a proper show cause notice stating the alleged mis-representation inviting the Petitioners to submit their explanations and then could have taken action in accordance with law. The arbitrariness in the action of the Respondent Corporation is apparent and the manner in which it has been executed has no legal basis. Abhishek Vidya Nand Singh, Petitioner in Writ Petition (Lodging) No.808 of 2009 was called upon by the Chief Manager, H.R. Department on 27th January 2009. The termination order was prepared and signed on 20th February 2009 but was issued and served upon the Petitioner on 27th February 2009. Thus, the Respondent Corporation had sufficient time at their disposal for complying with the principles of audi alteram partem in an appropriate manner.

29. It was a serious matter for consideration whether the Petitioners had actually made any mis-representation to the authorities or that their point of view was fully substantiated by the Statute of the University and even as per the practice adopted by the Mumbai University and State of Maharashtra in such matters. Such a casual approach on the part of the Respondent Corporation can hardly stand to the scrutiny of law. The learned Counsel appearing for the Respondent Corporation while referring to Clauses 3, 10 and 13 of the letter of appointment, contended that the Petitioners were probationers and their services could be terminated without assigning any reason. Further, they had made a mis-representation in the documents while securing the appointment and, therefore, their services could be terminated with immediate effect and the decision of the Corporation was final and binding and not questionable. It is not necessary for us to go into the legality and validity of the three clauses relied upon by the learned Counsel appearing for the Respondent Corporation as there is no challenge to them by the Petitioners in the present Writ Petitions. Suffice it to note that the letters dated 20th February 2009 and 20th April 2009 terminated the services of the Petitioners without giving them notice of any kind. Firstly, even if the Petitioners are treated as probationers, as claimed by the Respondent Corporation, even then, there is no adherence to the Regulation and Clause 3 of appointment letter as on successful completion of training, the Petitioners had to be absorbed in regular service of the Corporation in Grade A and were to be on probation for a period of six months. Clause 3 itself is arbitrary as it says that the services can be terminated by either side without notice and without assigning any reasons. Secondly, if they were under probation as stated and the Corporation wanted to take disciplinary action against them as they had made mis-

representation, the Respondent Corporation was expected to follow the procedure provided under the relevant Regulations and in any case at least serve proper show cause notice upon the Petitioners which in fact they have not done. Even when the Petitioner had brought to the notice of the authorities the correct facts duly supported by the Statute, Ordinance or Regulation and the letter of the University and prayed before the higher authorities to reconsider the decision, no heed was paid by the Respondent Corporation to this request of the Petitioner. This compelled the Petitioners to challenge that decision before this Court in the present Writ Petitions. Clause 13 which says that regarding interpretation of any terms and conditions, the decision of the Corporation shall be final and binding upon the Petitioners, can hardly be of much advantage to the Respondent Corporation.

The Corporation must act in accordance with law fairly and in consonance with the principles of natural justice. The action of the Respondent Corporation, to us, appears to be arbitrary and in violation of the principles of natural justice.

30. For all these reasons, we pass the following order :-

(a) Rule is made absolute in both the Writ Petitions.

(b) Orders of termination dated 20th February 2009 of Abhishek Vidya Nand Singh, Petitioner in Writ Petition (Lodging) No. 808 of 2009 and dated 20th April 2009 of Prakash Raghunandan Niranjan, Petitioner in Writ Petition (Lodging) No.810 of 2009 passed by the Respondent Corporation are set aside. The Petitioners would be entitled to all the consequential benefits.

(c) In the facts and circumstances of the case, we leave the parties to bear their own costs.

CHIEF JUSTICE A.M. KHANWILKAR, J.

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