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O.P. BHANDARI

v.

INDIAN TOURISM DEVELOPMENT CORPORATION LTD. & ORS. B

SEPTEMBER 26, 1986

[M.P. THAKKAR AND S. NATARAJAN, JJ.]

Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978: Rule 31(v)—Constitutional validity of—Termination of Services by giving ninety days' notice or pay in lieu thereof—Whether violative of Articles 14 and 16(1). C

Labour and services—Public Sector Undertaking—High Managerial cadre—Services of—Illegal termination—Relief against—Reinstatement or compensation—Court's discretion—Quantum of compensation—Factors to be considered. Employee entitled to relief under s. 89 of the Income-tax Act read with r. 21-A of the Income-tax Rules. D

Constitution of India, Articles 12, 14, 32 and 226—Public Sector Undertaking—A 'State'—High managerial cadre and employees—Differential classification under service rules—Whether permissible. E

Rule 31(v) of the Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978 provides that the services of an employee, who had completed his probationary period and who has been confirmed or deemed to be confirmed, may be terminated by giving him 90 days' notice or pay in lieu thereof. The services of the appellant, who was an employee of the respondent-Corporation holding the post of Manager of a Hotel at the material time were terminated by Memorandum No. P-B(OP)-22 dated 18th September, 1984, in exercise of the powers under the said rule by giving him pay for three months in lieu of notice. Aggrieved by the said order the appellant filed a writ petition in the High Court assailing the constitutional validity of r. 31(v) of the said Rules, which was summarily dismissed. F G

Allowing the appeal by special leave, the Court,

HELD: 1. The Indian Tourism Development Corporation is an H

A instrumentality of the State and, therefore, 'State' within the parameters of Article 12 of the Constitution of India. [927D-E]

Central Inland Water Transport Corporation Ltd. & Anr. v. *Brojo Nath Ganguly & Anr.*, [1986] 3 S.C.C. 156 applied.

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2.1 Rule 31(v) of the Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978, is unconstitutional and void, for such a rule which provides for termination of the services of the employees of the respondent-Corporation simply by giving ninety days' notice or by payment of salary for the notice period in lieu of such notice, cannot co-exist with Articles 14 and 16(1) of the Constitution of C India. The fundamental right embedded in these Articles is not a mere paper tiger nor is it so ethereal that it can be nullified or eschewed by a simple device of framing a rule which authorises termination of the services of an employee by merely giving a notice of termination. [930D-E; 928F; 929F]

D

2.2 The tenure of service of a citizen who takes up employment with the State cannot be made to depend on the pleasure or whim of the competent authority unguided by any principle or policy, nor his services allowed to be terminated on an irrational ground arbitrarily or capriciously. The authorities cannot be invested with uncontrolled discriminatory power to practise on considerations not necessarily based E on the welfare of the organisation but possibly based on personal likes and dislikes, personal preferences and prejudices. Provincialism, casteism, nepotism, religious fanaticism, and several other obnoxious factors may in that case freely operate on the mind of the competent authority in deciding whom to retain and whom to get rid of. And these dangers are not imaginary ones. They are very much real in organisations where F there is a confluence of employees streaming in from different States. Such a rule as in the instant case, is capable of robbing an employee of the dignity, and making him a supine person whose destiny is at the mercy of the concerned authority. The impugned rule, therefore, deserves to be quashed. [928H; 929A-B; D-F]

G *Central Inland Water Transport Corporation Limited & Anr.* v. *Brojo Nath Ganguly & Anr.*, [1986] 3 S.C.C. 156; *State Electricity Board* v. *D.B. Ghosh*, [1985] 2 S.C.R. 1014, referred to.

3.1 The Court has full discretion in the matter of granting relief to suit the needs of the matter at hand. If satisfied that ends of justice so H demand, the Court can certainly direct that the employer shall have the

option not to reinstate, provided the employer pays reasonable compensation as indicated by it. [932G] A

3.2 In the sphere of employer-employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. Though in regard to workmen and employees, reinstatement would be a rule, and compensation in lieu thereof a rare exception, as regards the high level managerial cadre the matter deserves to be viewed from an altogether different perspective. [932A-C] B

3.3 The public sector needs to be managed by capable and efficient personal with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the policy makers. It is but in public interest that such undertakings or their Board of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bonafide manner unable to function harmoniously as a team. These factors have to be taken into account by the Court at the time of passing the consequential order. [932E-G] C D

In the instant case, it cannot be said that the apprehension voiced by the respondent-Corporation as regards the negative consequences of reinstatement is unreasonable. The relations between the parties appear to have been strained beyond the point of no return. The Trade Union of the employees has lodged a strong protest and even held out a threat of strike, in the context of some acts of the appellants. Such unrest among the workmen is likely to have a prejudicial effect on the working of the undertaking which would *prima facie* be detrimental to the larger National Interest. In such a situation neither the undertaking nor the appellant can improve their image or performance. It is, therefore, a fit case for granting compensation in lieu of reinstatement. [933A-C] E F

4. In the private sector the managerial cadre of employees is altogether excluded from the purview of the Industrial Disputes Act and similar labour legislations. It can cut the dead wood and can get rid of a managerial cadre employee in case he is considered to be wanting in performance or in integrity. Not so in the public sector under a rule similar to r. 31(v). Public sector undertakings may under the circumstances be exposed to irreversible damage at the hands of an employee belonging to a high managerial cadre on account of the faulty policy G H

decisions or on account of lack of efficiency or probity of such an employee. The very existence of the undertaking may be endangered beyond recall. Such a situation can be remedied by enacting a regulation permitting the termination of the employment of employee belonging to higher managerial cadre, if the undertaking has reason to believe that his performance is unsatisfactory or inadequate, or there is a bonafide suspicion about his integrity, these being factors which cannot be called into aid to subject him to a disciplinary proceeding. If termination is made under such a rule or regulation, perhaps it may not attract the vice of arbitrariness or discrimination condemned by Articles 14 and 16(1) of the Constitution of India, inasmuch as the factors operating in the case of such an employee will place him in a class by himself and the classification would have sufficient nexus with the object sought to be achieved. [931A-H]

[Taking into account various factors, compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant was determined to be a reasonable amount to award in lieu of reinstatement, with statutory relief under s. 89 of the Income-tax Act, 1961 read with r. 21-A of the Income-tax Rules, 1961.] [934C-D; 936D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1969 of 1986

From the Judgment and Order dated 26.9.1984 of the Delhi High Court in Civil Writ Petition No. 2329 of 1984.

Govinda Mukhoty, K.G. Bhagat and Mahabir Singh for the Appellant.

G.B. Pai, O.C. Mathur, Miss Meera Mathur, D.N. Mishra and S. Sukumaran for the Respondents.

The Judgment of the Court was delivered by

THAKKAR, J. A CAT—scan of this appeal reveals three problems, viz:

I. Whether a rule or regulation framed by a public sector undertaking which is an authority under the control of Government of India and is a 'State' within the parameters

of Article 12 of the Constitution of India empowering the employer to terminate the services of an employee by giving notice of the prescribed period or payment of salary for the notice period in lieu of such notice is constitutional? A

II. If it is unconstitutional, whether the employee whose services are terminated under the said rule or regulation is always and invariably entitled to reinstatement? Whether option to pay compensation in lieu of reinstatement can be given to the employer in fit cases? B

III. What would be the appropriate amount to be reasonably awarded in lieu of reinstatement? C

These are the questions which call for answers in this appeal.[1]

Undisputed are the following facts, the same being incapable of being disputed: D

(1) The respondent Corporation (I.T.D.C.) is 'State' within the parameters of Article 12 of the Constitution of India it being an instrumentality of the State as per the law enunciated by this Court in *Central Inland Water Transport Corporation Limited & Anr.* v. *Brojo Nath Ganguly and Anr.* and *Central Inland Water Transport Corporation Limited & Anr.* v. *Taran Kanti Sengupta & Anr.*, [1986] 3 S.C.C. 156. E

(2) Appellant was an employee of the Respondent Corporation holding the post of Manager of Hotel Ranjit, New Delhi, at the material time when his services were terminated by the impugned order.[2] F

(3) Services of the Appellant were terminated in exercise of powers under Rule 31 (v) of the ITDC Conduct Discipline and Appeal Rules 1978, (ITDC rules) by G

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1. By Special Leave arising out of W.P. No. 2329 of 1984 dismissed by the High Court of Delhi summarily by its order dated 26.9.1984.

2. Annexure P-10, Memorandum No. P-B(OP)-22 dated 18th September, 1984. H

giving pay for 3 months in lieu of 3 months' notice,[3] under the said rule.

Rule 31 (v) of the I.T.D.C. Rules, the constitutional validity of which is questioned from the platform of Articles 14 and 16 (1) of the Constitution of India, provides:-

"31. Termination of services:

The services of an employee may be terminated by giving such notice or notice pay as may be prescribed in the contract of service in the following manner:-

i) X X X X

ii) X X X X

iii) X X X X

iv) X X X X

v) of an employee who has completed his probationary period and who has been confirmed or deemed to be confirmed by giving him 90 days' notice or pay in lieu thereof."

This rule cannot co-exist with Articles 14 and 16 (1) of the Constitution of India. The said rule must therefore die, so that the fundamental rights guaranteed by the aforesaid constitutional provisions remain alive. For, otherwise, the guarantee enshrined in articles 14 and 16 of the constitution can be set at naught simply by framing a rule authorizing termination of an employee by merely giving a notice. In order to uphold the validity of the rule in question it will have to be held that the tenure of service of a citizen who takes up employment with the

3. Memorandum No. P-B (OP)-22 dated 18th September, 1984.

"Please be advised that your services are no longer required hence stand terminated with immediate effect.

In accordance with rule No. 31(v) of ITDC Conduct, Discipline and Appeal Rule 1978, you are hereby paid three months pay in lieu of notice and a cheque No. 089988 dated 18.9.84 drawn on State Bank of India, New Delhi, representing a sum of Rs.7,950 (Rupees Seven Thousand Nine Hundred and Fifty only) is enclosed."

State will depend on the pleasure or whim of the competent authority unguided by any principle or policy. And that the services of an employee can be terminated even though there is no rational ground for doing so, even arbitrarily or capriciously. To uphold this right is to accord a "magna carta" to the authorities invested with these powers to practise uncontrolled discrimination at their pleasure and caprice on considerations not necessarily based on the welfare of the organisation but possibly based on personal likes and dislikes, personal preferences and prejudices. An employee may be retained solely on the ground that he is a sycophant and indulges in flattery, whereas the services of one who is meritorious (but who is wanting in the art of sycophancy and temperamentally incapable of indulging in flattery) may be terminated. The power may be exercised even on the unarticulated ground that the former belongs to the same religious faith or is the disciple of the same religious teacher or holds opinions congenial to him. The power may be exercised depending on whether or not the concerned employee belongs to the same region, or to the same caste as that of the authority exercising the power, of course without saying so. Such power may be exercised even in order to make way for another employee who is a favourite of the concerned authority. Provincialism, casteism, nepotism, religious fanatism, and several other obnoxious factors may in that case freely operate on the mind of the competent authority in deciding whom to retain and whom to get rid of. And these dangers are not imaginary ones. They are very much real in organisations where there is a confluence of employees streaming in from different states Such a rule is capable of robbing an employee of his dignity, and making him a supine person whose destiny is at the mercy of the concerned authority (whom he must humour) notwithstanding the constitutional guarantee enshrined in Articles 14 and 16 of the Constitution of India. To hold otherwise is to hold that the fundamental right embedded in Articles 14 and 16 (1) is a mere paper tiger and that it is so ethereal that it can be nullified or eschewed by a simple device of framing a rule which authorizes termination of the service of an employee by merely giving a notice of termination. Under the circumstances the rule in question must be held to be unconstitutional and void. This Court has struck down similar rules in similar situations. In *State Electricity Board* v. *D.B. Ghosh,* [1985] 2 S.C.R. 1014, Chinnappa Reddy J. speaking for a three-Judge Bench of this Court has observed that a (similar) regulation,[4] authorizing the

4. Regulation 34 of Regulations framed by West Bengal State Electricity Board reading thus:

termination of the services of a permanent employee, by serving three months' notice or on payment of salary for the corresponding period in lieu thereof, was ex facie 'totally arbitrary' and 'capable of vicious discrimination'. And that it was a naked 'hire and fire' rule and parellel of which was to be found only in the "Henary VIII clause" which deserved to be banised altogether from employer-employee relationship. The regulation thus offended Article 14 of the Constitution of India and deserved to be struck down on that account. In *Central Inland Water Transport Corporation Limited and Anr.* v. *Brojo Nath Ganguly and Another* AND *Central Inland Water Transport Corporation Limited & Anr.* v. *Tarun Kanti Sengupta and Anr.* (Supra) a Division Bench of this Court has struck down a similar rule[5] in so far as it authorized termination of employment by serving a notice thereunder as being violative of article 14 of the Constitution of India, *inter alia*, in as much as it was capable of being selectively applied in a vicious manner by recourse to 'pick and choose' formula.

There is, under the circumstances, no escape from the conclusion that Rule 31(v) of the aforesaid ITDC rules which provides for termination of the services of the employees of the respondent corporation simply by giving 90 days' notice or by payment of salary for the notice period in lieu of such notice, deserves to be quashed. As the occasion so demands, we feel constrained to place in focus and highlight an important dimension of the matter. The impugned regulation is extremely wide in its coverage in the sense that it embraces the 'blue collar' workmen, the 'white collar' employees, as also the 'gold collar' (managerial cadre) employees of the Undertaking. In so far as the 'blue collar' and 'white collar' employees are concerned, the quashing does not pose any problem. In so far as the 'gold collar' (managerial cadre) employees are concerned, the consequence of quashing of the

"34. In case of a permanent employees, his services may be terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof."

5. Rule 9 (i) of (Service, Discipline and Appeal) Rules of 1979 of Central Inland Water Transport Corporation Ltd. reading:-

"9. Terminatiion of employment for Acts other than misdemeanour.—(i) The employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice."

regulation calls for some reflection. In the private sector, the managerial cadre of employees is altogether excluded from the purview of the Industrial Disputes Act and similar labour legislations. The private sector can cut the dead wood and can get rid of a managerial cadre employee in case he is considered to be wanting in performance or in integrity. Not so the public sector under a rule similar to the impugned rule. Public sector undertakings may under the circumstances be exposed to irreversible damage at the hands of a 'gold collar' employee (belonging to a high managerial cadre) on account of the faulty policy decisions or on account of lack of efficiency or probity of such an employee. The very existence of the undertaking may be endangered beyond recall. Neither the capitalist world nor the communist world (where an employee has to face a death sentence if a charge of corruption is established) feels handicapped or helpless and countenances such a situation. Not being able to perform as per expectation or failure to rise to the expectations or failure to measure up to the demands of the office is not misconduct. Such an employee cannot thus be replaced at all. If this situation were to be tolerated by an undertaking merely because it belongs to the public sector, it would be most unfortunate not only for the undertaking but also for the Nation. The public sector is perched on the commanding heights of the National Economy. Failure of the public sector might well wreck the National Economy. On the other hand the success of the public sector means prosperity for the collective community (and not for an individual Industrial House). The profits it makes in one unit can enable it to run a losing unit, as also to develop or expand the existing units, and start new units, so as to the generate more employment and produce more goods and services for the community. The public sector need not therefore be encumbered with unnecessary shackles or made lame. It is wondered whether such a situation can be remedied by enacting a regulation permitting the termination of the employment of employee belonging to higher managerial cadre, if the undertaking has reason to believe, that his performance is unsatisfactory or inadequate, or there is a bonafide suspicion about his integrity, these being factors which cannot be called into aid to subject him to a disciplinary proceeding. If termination is made, under such a rule or regulation, perhaps it may not attract the vice of arbitrariness or discrimination condemned by Articles 14 and 16(1) of the Constitution of India, inasmuch as the factor operating in the case of such an employee will place him in a class by himself and the classification would have sufficient nexus with the object sought to be achieved. Of course it is for the concerned authorities to tackle the sensitive problem after due deliberation. We need say no more.

A B C D E F G H

A Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in Public Sector Undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to 'blue-collar' workmen and 'white collar' employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. In so far as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective—a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life-aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the 'policy-makers' of such undertakings. Then and then only can the public sector undertaking achieve the goals of

1. maximum production for the benefit of the community,

2. social justice for workers, consumers and the people, and

3. reasonable return on the public funds invested in the undertaking.

It is in public interest that such undertakings or their Board of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bonafide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the Court at the time of passing the consequential order, for the Court has full discretion in the matter of granting relief, and the Court can sculpture the relief to suit the needs of the matter at hand. The Court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the Court.

So far as the facts of this case are concerned, we are satisfied that

this is a fit case for granting compensation in lieu of reinstatement, instead of granting 'reinstatement'. For, it cannot be said that the apprehension voiced by the respondent-Corporation as regards the negative consequences of reinstatement is unreasonable. We do not propose to pronounce on the validity or otherwise of the allegations and counter allegations made by the parties in their respective affidavits. Suffice it to say that the relations between the parties appear to have been strained beyond the point of no return. The Trade Union of the employees has lodged a strong protest and even held out a threat of strike, in the context of some acts of the Appellant. Such unrest among the workmen is likely to have a prejudicial effect on the working of the undertaking which would *prima facie* be detrimental to the larger National interest, not to speak of detriment to the interest of concerned undertaking. We are not impressed by the submission that the Union is virtually a 'company's Union. In any case such disputed questions of facts cannot be resolved in this forum. We are *prima facie* satisfied that the apprehension is not ill-founded. What is more, reinstatement is perhaps not even in the interest of the appellant as he cannot give his best in the less-than-cordial-atmosphere and it will also result in misery to him, let alone the other side. Neither the undertaking nor the appellant can improve their image or performance, or, achieve success. In fact it appears to us that both sides will be unhappy and miserable. These are valid reasons for concluding that compensation in lieu of reinstatement, and not reinstatement, is warranted in the circumstances of the present case.

Counsel for the appellant having forcefully pressed the claim for reinstatement, has contended that in case the Court is disinclined to order reinstatement, the appellant ought to be awarded the full salary and allowances which would have accrued to him till the date of his superannuation which is more than 8 years away. We think it would be unreasonable to award 8 years' salary and allowances, as lump sum compensation in lieu of reinstatement. We consider it unreasonable because:-

> (i) To do so would tantamount to paying to the appellant EVERY MONTH 20% *OVER AND ABOVE* what he would have earned if he was continued in service WITHOUT DOING ANY WORK as the lump sum payment of 8 years' salary invested at 15% interest (it being the current rate of interest) would yield a monthly recurring amount equivalent to his current monthly salary *'plus'* 20%;

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(ii) To do so would be tantamount to paying to him his present salary etc. plus 20% more every month *not only till his date of retirement but till his death* (if he lives longer) and also *to his heirs thereafter, IN PERPETUITY.*

B

(iii) Besides, the corpus of the lumpsum amount so paid as compensation would remain with him in-tact.

Obvious it is, therefore, that the Court would be conferring a 'bonanza' on him and not compensating him by accepting this formula. The submission, accordingly, deserves to be repelled unhesitatingly.

C

In our considered opinion, compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz:-

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1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances. In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:

E

(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.

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(iii) If he had been reinstated he would have earned the salary only upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation, for his

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lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event.

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No doubt he will not have the advantage of further promotion, but

then what are his prospects, given the present relationship? Besides, the chances of promotion can be set off against the risk of a departmental disciplinary proceeding. Factors (i), (ii), (iii) and (iv) are of such great significance that compensation on the basis of 50% of his annual salary and allowances is much more to his advantage. We are thus satisfied that compensation in lieu of reinstatement on the aforesaid basis is more than reasonable. We, therefore, direct that:

I—The Respondent Corporation shall reinstate the appellant with full back-wages (including usual allowances), or, at its option,

II—The Respondent Corporation shall pay to the appellant:-

(1) Salary including usual allowances for the period commencing from the date of termination of his service under the impugned order till the date of payment of compensation equivalent to 3.33 years' salary including usual allowances to him.

(2) Provident Fund amount payable to the appellant and retirement benefits computed as on the date of payment as per clause 1 shall be paid to him within 3 months from the said date.

III—The appellant shall vacate and make over possession of the premises provided to the appellant by the respondent-company before the expiry of 3 months from the date of this order or within one month of the day on which payment under clause II is made, whichever is later.

IV—Respondent shall pay the costs to the Appellant.

V—Interim order shall stand vacated subject to the direction embodied in Clause III.

VI—Since the amount is being paid in one lump sum, it is likely that the employer may take recourse to Section 192 of the Income-tax Act, 1961 which provides that any person responsible for paying any income chargeable under the head 'Salaries', shall, at the time of payment, deduct income-tax on the amount payable at the average rate of

A income computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If, therefore, the employer proceeds to deduct Income-tax as provided by Section 192, we would like to make it abundantly clear that the appellant would be entitled to relief under Section 89 of the Income-tax Act which provides that where by reason of any portion of assessee's salary being paid in arrears or in advance by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a higher rate than that it would otherwise have been assessed, the Income-tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21-A of the Income-tax Rules. The appellant is entitled to relief under Section 89 because compensation herein awarded includes salary which has been in arrears as also the compensation in lieu of reinstatement and the relief should be given as provided by Section 89 of the Income-tax Act read with Rule 21-A of the Income-tax Rules. The appellant is indisputably entitled to the same. If any application is required to be made, the appellant may submit the same to the competent authority and the Corporation shall, through its Tax Consultant, assist the appellant for obtaining the relief.

The appeal is allowed. The order of the High Court is set aside. Order in the aforesaid terms is passed.

P.S.S. Appeal allowed.