MANU/BH/0065/1956

Equivalent Citation: AIR1956Pat257

IN THE HIGH COURT OF PATNA

Misc. Judicial Case No. 251 of 1954

Decided On: 08.03.1956

Appellants: **Bhawani Sahai**
Vs.
Respondent: **Syed Naqui Imam and Ors.**

Hon'ble Judges/Coram:
Vaidynathier Ramaswami, Rai and Sinha, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: B.P. Samaiyar and Bindeshwari Prasad Sinha, Advs.

For Respondents/Defendant: Adv. General and Basudeva Prasad, Adv.

JUDGMENT

Rai, J.

1. The events leading to the filing of the present application may shortly be stated as follows. Under the District Judge of Patna there are three establishments of Copying Department one at Patna the other at Bihar and the third at Barh. The appointment of copyists for the three establishments, mentioned above, are made by the District Judge of Patna in accordance with the rules provided by the General Rules and Circular Orders of the High Court of Judicature at Patna, Civil, Volume I, Part IV, Chapter II.

The petitioner, Bhawani Sahai, was appointed as a temporary copyist in the Copying Department at Patna by the District Judge of Patna on 15-1-1936 on remuneration basis. In this capacity the petitioner worked for a number of years until he was suspended for two months with effect from 9-2-1954, by the order of the District Judge dated 29-1-1954.

It may be mentioned that he had been suspended for short intervals on previous occasions also under the orders of the District Judge dated 30-7-1952 and 6-1-1954. While he was still under suspension the District Judge of Patna passed an order on 2-3-1954, directing Bhawani Sahay to report for duty in the Copying Department at Bihar on 9-4-1954. On 13-3-1954, the petitioner filed a representation before the District Judge for reconsideration of his order dated 2-3-1954, but his representation was rejected on that very date.

On 8-4-1954, the petitioner filed another application before the District Judge for leave and for permission to join his duty at Bihar on 21-4-1954, but this application was also rejected and he was asked to join his post at Bihar and then to apply for leave if necessary. Instead of joining his post at Bihar, the petitioner filed a Miscellaneous Judicial case before this Court on 15-4-1954, for issue of an appropriate writ for quashing the order of the District Judge of Patna dated 2-3-1954 by which the petitioner had been directed to join the Copying Department at Bihar.

This gave rise to M. J. C. No. 189 of 1954, which was ultimately withdrawn on 19-4-1954.

The petitioner reported for duty at Bihar on 21-4-1954, but on that very date he applied for two days' leave. On 22-4-1954, the District Judge of Patna passed an order dispensing with his services. This order was communicated to the petitioner by the Registrar of the Civil Courts by his letter dated 22-4-1954, which is annexure I to the main application filed by the petitioner.

On 10-5-1954, the petitioner filed the present application for issue of a writ, order or direction for quashing the orders of suspension dated 30-7-1952, 6-1-1954, 29-1-1954, the order of the District Judge dated 6-3-1954, transferring the services of the petitioner to Bihar and the order dated 22-4-1954, by which the services of the petitioner had been dispensed with. In this application the petitioner arrayed Mr. Syed Naqui Imam, the then District Judge of Patna as opposite party No. 1 and Mr. H. P. Sinha, ex Registrar, Civil Courts, Patna, as the opposite party No. 2.

2. At the time of the hearing of this application Mr. samaiyar for the petitioner confined his attack to the last order of the District Judge by which the services of the petitioner had been dispensed with. In this connection Mr. Samaiyar contended that the learned District Judge of Patna was not justified in passing the order aforesaid without giving reasonable opportunity to the petitioner to show cause against the action proposed to be taken in regard to him as provided by Article 311(2) of the Constitution of India.

Mr. Samaiyar also contended that the District Judge had while passing that order, violated the principle of natural justice as his client should not have been punished without giving him an opportunity to be heard in that connection.

3. While dealing with his first point, Mr. Samaiyar contended that his client was holding a civil post under the State of Bihar and was entitled to the protection provided by Article 311 of the Constitution. In this connection he referred to the decision in the case of Yusuf Ali Khan v. Province of the Punjab AIR 1950 Lah 59 where a learned single Judge of Lahore High Court had, while dealing with the applicability of Sections 240 and 241 of the Government of India Act, 1935, observed as follows:

> "I have examined the various definition clauses in the Constitution Act and fail to find any definition of the expression 'civil post'. The expression must, therefore, be construed in the ordinary dictionary sense of the words employed namely an appointment or an office on the civil side of the administration as distinguished from the military side. There can be no doubt that a post of Sub-Inspector in the Civil Supplies Department of the Provincial Government is such a post."

4. In my view, there is no merit in the contention of Mr. Samaiyar. The petitioner was appointed as a copyist in the Copying Department in accordance with the provisions of Part IV Chapter II of the General Rules and Circular Orders (Civil) Volume I. From Rule 11 of this Chapter, it is clear that the petitioner was to be paid according to the amount of work done by him and his appointment was purely on a remuneration basis. He did not draw any fixed salary. The amount of remuneration payable to him depended on the amount of work done by him.

From the letter dated 29-12-1954, issued under the authority of the Government of

Bihar which is annexure D to the counter-affidavit filed by the opposite party, it is clear that the typists were not to be treated as Government servants. From the Bihar Records Manual, Chapter VIII, Rule 321. also it is clear that a copyist or typist is no better than a licensee. In this case also Mr. Samaiyar did not contend that his client was a Government servant but he submitted that in any event he will be deemed to have held a civil post under the State of Bihar. In my view, the petitioner, who was not a Government servant, cannot be said to have held a civil post under the Government.

The decisions in the cases of Balai Chand Basak v. N. Roy Chaudhury MANU/WB/0169/1954 (B) and Kamta Charan Srivastava v. Post Master General, B and O. MANU/BH/0096/1955 (C) cited by Mr. Samaiyar have no application to the present case. In those two cases it was held that Article 311 of the Constitution of India applies even to temporary Government servants. I agree with Mahabir Prasad, who appeared for the opposite party, that the petitioner cannot be said to have held a civil post under the State of Bihar within the meaning of Article 311 of the Constitution.

I also agree with him that the order dispensing with the services of the petitioner does not amount to his 'dismissal', 'removal' or 'reduction in rank' within the meaning of Article 311(2) of the Constitution. The post of copyist is a precarious one and there is no cadre attached to it. The District Judge can dispense with the services of a copyist under certain circumstances referred to in Chapter II, Part IV of the General Rules and Circular Orders.

The term 'dismissal', 'removal' or 'reduction. in rank' of a person holding a civil post under the Government is not, in my opinion synonymous with the dispensing with his services. I respectfully agree with the view of this Court as expressed in the case of Ajit Kumar Mukherji v. Chief Operating Suptd., E.I.Rly.MANU/BH/0027/1953 AIR that the expressions 'dismissal', 'removal' and 'reduction in rank' are technical terms not construable in the popular sense. This view was reiterated in the case of Ram Adhar Singh v. State of Bihar MANU/BH/0069/1954 (189) (E) and also in a recent decision of a Division Bench of this Court in Biswanath Singa v. Dist. Traffic Supdt., Sonapur MANU/BH/0057/1956 (F).

In my view, the petitioner will not be deemed to have dismissed or removed within the meaning of Article 311(2) of the Constitution. In this view of the matter the order of the District Judge dispensing with the services of the petitioner cannot be quashed on the ground of its having violated the provisions of Article 311(2) of the Constitution.

5. While dealing with the second point, namely, the violation of the principle of natural justice inasmuch as the petitioner was not heard before the District Judge passed the order dispensing with his services Mr. Samaiyar contended that the said order of the District Judge was a quasi-judicial order and not an administrative order. He conceded that if the order be held to be an administrative order then his client was not entitled to any relief.

6. The order under consideration was passed by the learned District Judge of patna on 22-4-1954, on report submitted to him by the Registrar, Civil Courts, Patna. The report and the order passed thereon run thus:

" 'District Judge'.

B. Shawani Sahay (English Copyist) was suspended under order dated 29-1-

54 for two months and the suspension was to begin from 9-9-54. By an order dated 2-3-54. B. Bhawani Sahay was ordered to join Bihar Sharif after expiry of the aforesaid suspension period. Thus B. Bhawani Sahay had to join Bihar Sharif as an English copyist on 9-4-54 under order dated 2-3-54. He put in a representation dated 13-3-54 against the transfer order which was rejected by your Order dated 2-4-54.

The said order was communicated to him on the same date and the representation bears an endorsement of B. Btiawani Sahay that he received copy of the order and the said endorsement is dated 2-4-54. Letter No. 167 dated 14-4-54 of Munsif Bihar Sharif may be perused. It appears from the said letter that B. Bhawani Sahay did not join Biharsharif as an English copyist till 14-4-1954 and no information of his joining thereafter has been received up till now.

It is thus clear that B. Bhawani Sahay deliberately disobeyed the orders of transfer which by itself, is highly unsatisfactory and tantamounts to gross misconduct. Rule 8 of the G. R, C. O., Part I, Chapter II at page 118 may be perused and under the said rule if the work of a copyist is unsatisfactory in other respects the services of such a copyist should be dispensed with.

A { I would submit that the disobedience or " order shows Indiscipline and gross misconduct and I would submit that the services of I Bhawani Sahay may be dispensed with under the rules, if approved. The order may take effect at once.

Sd/- H. N. Sinha,
Registrar, 22-4-1954."

On this note, the District Judge passed the following order:

"I have had thorough discussions with Registrar and have seen the connected papers. I am more than satisfied that Mr. Bhawani Sahay should no longer be retained not only because of his having disobeyed orders, but also in the interest of the administration of the judgeship. His previous record is most unsatisfactory. As at A.

Sd/- S. N. Imam, D.J., 22-4-54."

7. The above order was passed by the District Judge under Rule 8, Chapter 2, Part IV of the General Rules and Circular Orders (Civil) Volume I, which runs thus:

"The services of a copyist whose work is inaccurate or in other respects unsatisfactory should be dispensed with."

From Rule 5, Chapter II, Part IV of the General Rules and Circular Orders (Civil) Volume I, it is quite clear that the petitioner was a copyist and Rule 8 quoted above was applicable in his case. In my view the order passed by the District Judge was purely an administrative order, the propriety of which was not intended to be subjected to any objective test in any Court of law.

The order under consideration is not a quasi-judicial order, vide the majority view of their Lordships of the Supreme Court in the case of Province of Bombay v.

Khushaldas S. Advani MANU/SC/0034/1950 (G), and is not amenable to a writ of certiorari. In this view of the matter on the concession made by Mr. Samaiyar it is not necessary for me to further deal with the question whether by passing the order, under consideration the learned District Judge had violated any principle of natural justice.

8. Admittedly there are three Copying Departments under the District Judge, Patna, at three places, namely, at Patna, at Barh and at Bihar. The appointment of copyists for all the three places has to be made by the District Judge, Patna, under part IV, Chapter II of the General Rules and Circular Orders (Civil) Volume I.

From paragraph 5 of the counter-affidavit it is quite clear that there is only one gradation list for the typists and copyists for the entire judgeship and transfers of copyists and typists are made when necessity arises either in the interest of administration or in compliance with Rule 4 of the General Rules and Circular Orders (Civil) Volume I. The petitioner, Bhawani Sahay, who was originally appointed in the copying Department at Patna, appears to have worked for about a year in the Copying Department at Barh vide notes dated the 2nd January 1948 and the 27th November, 1948 made in the record of his service (annexure B to the counter-affidavit).

In my view, the District Judge of Patna was entitled to direct the petitioner by his order dated 6-3-1954, to work in the Copying Department at Bihar. The petitioner had made a representation on 13-3-1954, against his proposed transfer to Bihar but the same was rejected. He was due to join his post at Bihar on 9-4-1954, but on 8-4-19.54, he filed another application for leave and for permission to join his duty at Bihar on 21-4-1954. This application also was rejected and he was asked to join his post at Bihar and then apply for leave if necessary.

The petitioner states that he was not informed of the order passed on this application. From paragraph 20 of the counter-affidavit filed by the opposite party, however, it appears that the orders passed on the application filed by the petitioner on 8-4-1954, for leave were communicated to him by memo No. 1341 dated 10-4-1954 (annexure P to the counter-affidavit).

The petitioner has no doubt reiterated in his reply that the order passed on his application for leave was not communicated to him, but I am not prepared to place any reliance on his statement. I am further of opinion that it was the duty of the petitioner to have made enquiry as to what orders had been passed on his application for leave. He is a resident of patna and it was not difficult for him to ascertain from the relevant department of the Civil Court at Patna as to whether he had been granted any leave or not.

To me it appears that the petitioner was not in a mood to obey the order of the District Judge and resume his duties at Bihar. This is proved from his conduct in rushing to this Court and filing an application for issue of a writ for quashing the order of the District Judge dated 2-3-1954, directing him to report for duty in the Copying Department at Bihar on 9-4-1954. The Civil Courts were open both on 12 and 14-4-1954.

Now, instead of proceeding to Bihar the petitioner got the writ application ready on 14-4-1954, and filed it in this Court on 15-4-1954. It was, however, ultimately withdrawn on 19-4-1954, when probably the learned Judges who were in charge of the Constitution Bench were not prepared to admit the application.

Be that as it may, I am quite convinced that the petitioner had no explanation for his conduct even if any opportunity had been given to him to explain the same. If the order passed by the District Judge had been open to be tested objectively even then I would not have been inclined to issue a writ in this case.

The record of service of the petitioner (annexure B to the counter-affidavit) coupled with his conduct in April, 1954 could have led any officer, who was responsible for the administration of the Copying Department, to have passed the order which has been passed by the learned District Judge. Thus, in any view of the matter, the District Judge while passing the order dated 22-4-1954, cannot be said to have violated any principle of natural justice.

9. Mr. Mahabir Prasad who appeared for the opposite party contended on the strength of the decision in the case of 'Suresh Chandra Ganguly v. J. W. Orr' MANU/WB/0160/1955 (H) that as opposite party 1, Mr. Syed Naqui Imam, had ceased to be the District Judge of Patna Civil Courts after he was raised to the Bench of this Court in August 1954 and Mr. H. P. Sinha, who at one time held the post of the Registrar Civil Courts, Patna, had been transferred to some other place even before the present application was filed, no effective order can be passed in the case and as such this case has become infructuous.

According to him after the order dispensing with the services of the petitioner had been passed, his name had been removed from the list of approved typists. He contended that mere quashing the order of the District Judge dated 22-4-1954, will not under the circumstances afford any effective relief to the petitioner as without a further direction from this Court to include his name in the list of approved typists, there is no chance of his being re-employed in the Copying Department, and this cannot be done in absence of the authorities concerned who have not been made party to this application.

10. In reply to this argument Mr. Samaiyar relied on the decision of their Lordships of the Supreme Court in the case of 'Hari Vishun Ka-math v. Ahmad Ishaque' MANU/SC/0095/1954 (I) where it was held that the writ of certiorari for quashing is directed against a record and that the power to issue a writ under Article 226 to a person as distinct from an authority is sufficiently comprehensive to take in any person who has the custody of the record.

On the strength of this decision he contended that the order under consideration can be quashed by this Court even if the District Judge who had passed that order had ceased to occupy that post at the present moment. He further urged that if the order of the District Judge dispensing with the services of his client is quashed, the petitioner will ipso facto revert to the post of a copyist at Bihar.

In order to make the main application in conformity with the view taken in the case reported in MANU/WB/0160/1955 (H) the petitioner filed an application on 17-1-1956, at the time of the reply by Mr. Samaiyar for making the District Judge, Patna, and the Registrar, Civil Courts, Patna as opposite party Nos. 3 and 4 to the present application.

Having held against the petitioner on merit of the main application, it is not necessary for me to throw it away on the ground of its having become infructuous according to the contention of Mr. Mahabir Prasad. I am also not inclined to entertain the application for adding new parties at the fag end of the argument of the case. I am not at all impressed by the reason given by the petitioner for filing the petition so

late in para 1 of the petition which states,

> "that the petitioner has been informed orally in Court by the Advocate General that another District Judge has taken over charge of the office at Patna".

I am not prepared to believe that the petitioner, who is a resident of Patna, was not aware until 16-1-1956, that Mr. Syed Naqui Imam had long ceased to be the District Judge of Patna Civil Courts and had been raised to the Bench of this Court since August, 1954. Such an irresponsible statement made on affidavit is highly deprecated. Besides this, adding of new parties at this stage would necessitate the. issue of fresh notice to the newly added parties and rehearing of the whole case over again in their presence. This I am not prepared to do in this case.

11. The result is that the application fails and is dismissed but, in the circumstances of this case, there will be no order for costs.

Sinha, J.

12. This is an application under Articles 226 and 227 of the Constitution by the petitioner, who was employed as an English Copyist in the Copying Department of the District Judge of Patna, for calling up the records and quashing the order, dated 22-4-1954, passed by the District Judge of patna dispensing with his services.

13. In view of the submissions made, it is not at all necessary to state all the details of the petitioner's case which are to be found in his application; it is enough to state that the petitioner was appointed as a temporary English Copyist in the aforesaid Copying Department sometime in the year 1936, and was, later, confirmed in his appointment on 2-5-1942.

When the petitioner was appointed in 1936, a Service Book was opened in his name with a remark "temporary" in one of the columns of the Service Book. The petitioner was an English Copyist, popularly known as typist, and was allowed dearness allowance by the Government, and was further allowed to contribute to the General Provident Fund.

The appointment of a typist is made under the provisions of Part IV Chapter II, of the Patna High Court General Rules and Circular Orders, Civil Volume I. On 2-3-1954, an order was passed for his transfer to the Munsif's Court at Bihar, and he was asked to join there on 9-4-1954. This order of transfer was communicated to the petitioner on 6-3-1954.

On 13-3-1954, he filed an application for reconsideration of the order of his transfer, and one of the grounds of his objection to the transfer was that he was not a Government servant, and, therefore, he could not be transferred; and another ground was lack of facilities at Bihar for the education of his daughter, who was being educated at patna. He also filed an application to the District Judge for leave on 8-4-1954, with effect from the 9th of April till the re-opening day after the Good Friday holidays, on the ground that his son had become traceless since a day before the application was made, and that, in the circumstances, it would not be possible for him to join the Copying Department at Bihar on the 9th of April.

This application was put up before the Registrar of Civil Courts Patna on the 9th of April, who submitted the following note to the District Judge:

"D. J.

It is a petition on behalf of Sri Bhawanl Sahay for time to join Biharsharif today on the ground mentioned in the petition. He can join at Biharsharif and then apply for leave.

Sd/- H- P. Sinha,
9-4-54"

The District Judge, on this note passed the order

"Yes.

Sd/- S. N. Imam
9-4-1954."

14. The petitioner submits that this order of the District Judge was never communicated to him. On 15-4-1954, the petitioner filed an application under Article 226 of the Constitution in this Court against the order of transfer (M. J. C. No. 189 of 1954), but it was withdrawn on 19-4-1954. On the 21st April, 1954, after the Good Friday holidays, the petitioner joined at Bihar, and obtained leave for two days from the Munsif of Bihar. On the 26th of April, 1954, according to him, the order of the District Judge dispensing with his services was communicated to him.

15. The petitioner, therefore, submitted:

(1) that Article 311 of the Constitution applied to his case, and charges ought to have been framed against him, opportunity should have been given to him to defend himself and then notice ought to Have been given to him as to the proposed punishment; and that not haying been done, the order of the District "Judge is without jurisdiction; and

(2) that in any view of the matter, according to the well established principles of natural justice, his services should not have been dispensed with on the grounds mentioned in the order of the District Judge without affording him an opportunity to be heard against the accusation made against him, as is found in the order in question.

16. The facts, as I have stated above, are admitted by the opposite party, except that, according to the petitioner, the order of the District Judge, dated 9-4-1954, rejecting his application for leave, was not communicated to him, while, according to the opposite party, the same was communicated to the petitioner. This difference, however, is very important for the decision of the matter before this Court.

17. In my opinion also the petitioner's case is not covered by the provisions of Article 311 of the Constitution. That Article applies to a person

"who is a member of, a Civil Service of the Union or an All India Service or a Civil Service of a State or holds a civil post under the Union or a State".

Therefore, there are two categories of civil servants to whom this Article applies.

The petitioner conceded that he is not a Government servant under the first category, but contended that he holds a civil post under the State. For the reasons given by my learned brother, it must be held that he is not even covered by the second category of civil servants. In other words, he does not hold a civil post under the State.

18. The only question that remains to be considered is as to whether he is entitled to a writ on the ground that the principles of natural justice have been denied to him, and that he should have given an opportunity of being heard before the impugned order was passed. To appreciate the contention raised, it is necessary to quote the note of the then Registrar, Mr. H. N. Sinha, dated 22-4-1954, and the order of the District Judge of the same date dispensing with the services of the petitioner passed on the said note:

> "District Judge,
>
> B. Bhawani Sahay (English Copyist) was suspended under order dated 29-1-1954 for two months and the suspension was to begin from 9-2-1954. By an order dated 2-3-1954 B. Bhawani Sahay was ordered to Join Biharsharif after expiry of the aforesaid suspension period. Thus B. Bhawani Sahay had to join Biharsharif as an English copyist on 9-4-1954 under order dated 2-3-1954. He put in a representation dated 13-3-1954 against the transfer order which was rejected by your order dated-2-4-1954.
>
> The said order was communicated to him on the same date and the representation bears an endorsement of B. Bhawani Sahay that he received copy of the order and the said endorsement is dated 2-4-1954. Letter No. 167 dated 14-4-1954 of Munsif, Biharsharif, may be perused. It appears from the said letter that B. Bhawani Sahay did not join Biharsharif as an English copyist till 14-4-1954 and no information of his Joining thereafter has been received up till now.
>
> It is thus clear that B. Bhawani Sahay deliberately disobeyed the orders of transfer which, by itself, is highly unsatisfactory and tantamounts to gross misconduct. Rule 8 of the G. R. C. O. Civil Part I, Chapter II, at page 118 may be perused and under the said rule if the work of a copyist is unsatisfactory in other respects the service of such a copyist should be dispensed with.
>
> I would submit that the disobedience of orders shows indiscipline and gross misconduct and I would submit that the service of B, Bhawani Sahay may be dispensed with under the rules, if approved. The order may take effect at once. } A
>
> Sd/- H. N. Sinha
> Registrar, 22-4-1954"

On this note, the District Judge passed the following order;

> "I have had thorough discussions with Registrar and have seen the connected papers. I am more than satisfied that Mr. Bhawani Sahay should no longer be retained not only because of his having disobeyed orders, but also in the interest of the administration of the judgeship. His previous record is most unsatisfactory. As at A.
>
> Sd/- S. N. Imam.
> D. J. 22-4-1954".

It will be seen that the gravamen of the charge, according to the Registrar, was that "the disobedience of order shows indiscipline and gross misconduct". Upon that the

District Judge had thorough discussion with the Registrar and had seen the connected papers, and the District Judge was satisfied that the petitioner should no longer be retained not only because of his having disobeyed orders, but also in the interest of the administration of the judgeship, and also that his previous record was unsatisfactory.

I have no doubt in my mind that the chief consideration which weighed with the Registrar was the disobedience of the order of the District Judge by not joining the Copying Department at Bihar on 9-4-1954. While passing the order, the learned District Judge further added another ground of his previous bad record.

I have already indicated that the petitioner contends that he was not communicated the order passed upon his application dated 8-4-1954, wherein he had prayed for leave and permission to join the Copying Department at Bihar after the Good Friday holidays, that is, on 21-4-1954. The opposite party contends that the said order had been communicated to the petitioner.

According to para 20 of the counter-affidavit, necessary orders were passed and communicated to the petitioner by Memo No. 1341 dated 10-4-1954 (Annexure F). In reply to this statement in the counter-affidavit, the petitioner has reiterated in para 19 of his reply to the counter-affidavit that

> "I emphatically assert that no such order was ever communicated to me nor did I receive any such order from the District Judge, Patna. The opposite party be directed to produce any service report duly signed by me snowing that I received the said memo No. 1314 dated 10-4-1954" This is a question of fact whether the aforesaid order was communicated to the petitioner or not, and it is not within our province to investigate that fact. One fact, however, is significant that in the note of the Registrar, referred to and quoted above, there is no mention of the application for leave made by the petitioner on 8-4-1954 and the order passed thereon.
>
> The opposite party submits that the petitioner's services were dispensed with under Rule 8 at page 114 of the Patna High Court General Rules and Circular Orders, Civil, Volume I, Chapter II, Part IV, which reads as follows: "The services of copyist whose work is inaccurate or in other respects unsatisfactory should be dispensed with" and that it is an administrative order. This provision in plain terms empowers the authority namely the District Judge, to dispense with the services of copyists whose work is "inaccurate" or "in other respects unsatisfactory".

There is no indication in the order of the learned District Judge that the work of the petitioner was inaccurate or his work was otherwise unsatisfactory. All that I get from the order is that he had disobeyed the order of the District Judge and that his services were to be dispensed with in the interest of the administration of the judgeship.

It appears to me that the principal ground made out by the Registrar and accepted by the District Judge was that the petitioner had disobeyed the orders. According to the counter affidavit though controverted by the reply to the counter affidavit the order of the District Judge dated 9-4-1954, upon the application of the petitioner, dated 8-4-1954, had been communicated to him, and in spite of such communication, the petitioner did not join the Copying Department at Bihar on 9-4-1954, as he should have done. This did require investigation.

I have also no doubt that the services of the petitioner were dispensed with as a penalty for having disobeyed the orders of the District Judge. It is, therefore, for consideration whether the petitioner was entitled to be heard before that order was passed by the District Judge dispensing with his services. If he had been heard it was likely that he could have satisfied the District Judge that there was no case of disobedience of his order, as the order had not been communicated to him, and it was more than likely that the order which the District Judge passed on 22-4-1954 may not have been passed.

It is argued by learned Advocate-General, on behalf of the opposite party, that the services of the petitioner, as a typist, were dependent upon the sweet will of the District Judge, the appointing authority, and further that the position of a typist or copyist, as a matter of fact is no better than a day labourer, whose services could be dispensed with at the discretion of the employer.

In my opinion, however, the provisions of the rules embodied in part IV, Chapter II, of the Patna High Court General Rules and Circular Orders, Civil, Volume I, show that the position of a typist or copyist is not that of a day labourer, but it is of a different nature. According to Rule 1 at page 113, at stations where there are more Courts than one there shall be one amalgamated Copying Department. The Copying Department according to Rule 2 shall have as many copyists (which term includes typists also) as may be required for the purpose of supplying all applicants with copies without inconvenient delay.

Rule 3 provides that in case it appears that the granting of ordinary copies is likely to be much delayed by reason of having to furnish urgent copies, an extra copyist may be temporarily appointed for the number of days actually necessary. Rule 4 provides that the number of copyists must not be greater than will admit, under ordinary circumstances, of each vernacular copyist earning at least Rs. 40 and of each English copyist earning at least Rs. 80 per month.

If the average earnings fall regularly below this rate steps should be taken to reduce the establishment. The notice (sic) to Rule 4 further provides that no new appointment is to be made in the office until the above standard has been worked up to. Reading these rules together, I am of the opinion that the Copying Department is a permanent department and that copyists are employed and their employment continues until each vernacular copyist earns at least Rs. 40 and an English copyist gets Rs. 80 per month, and that so long as the average earning does not fall below the standard laid down in Rule 4, the copyists employed are to continue.

If, however, the average earnings fall below the standard so laid down, steps are to be taken to reduce the establishment; & so long as this contingency does not occur, the copyists once employed are to continue unless their work is "inaccurate" or "in other respects unsatisfactory". In Government Circular No. C/C-1037/51, 10525F, dated 29-12-1951, addressed by the Secretary to Government, Revenue Department, to the Secretary to the Board of Revenue, Bihar and the Registrar High Court, Patna, in para 5, it is stated that "the daily rate of remuneration for the mappist should be raised from 1/8/- to 3 (three) as they are 'casual workers and are not guaranteed stable volume of work'".

The important expressions have been underlined (here in ' ') by me. This also shows that a copyist is not like a mappist a casual worker and that a mappist is not guaranteed stable volume of work. The provisions of Rule 2 at page 113 of the Patna

High Court General Rules and Circular Orders mentioned above, are to the same effect, namely, that a stable volume of work should be guaranteed to the copyists of the Copying Department.

Besides, as I have already indicated, these copyists are' given the benefit of Government dearness allowance and they are also entitled to contribute to the General Provident fund; and like Government servants they get free medical aid. I am, therefore, of the view that these copyists are not day labourers, as is the contention of the learned Advocate-General: they are neither Government servants nor daily labourers, their position is much higher and more stable than a day labourer, and can be called semi-Government servants.

I am further of the view that Rule 8 at page 114 does not give power to the District Judge to dispense with the services of a copyist at his will. In other words, Rule 8 provides for dispensing with the services of a copyist as a form of penalty, and this power to impose penalty under Rule 8 cannot be arbitrary. The reason for taking action under Rule 8 must be that the work of the copyist is inaccurate or that his work is in other respects unsatisfactory, and the reason must be based upon facts showing that the work is Inaccurate or In other respects unsatisfactory.

I do not for a moment hold that the District Judge is not entitled to dispense with the services of a copyist for disobedience of his orders, but what I think is that, before action is taken under Rule 8, the man against whom the order is to be passed must be given an opportunity of showing cause and being heard. In the present case, I am not quite sure if the District Judge would have passed the order which he did if he had heard the petitioner. He may have felt convinced that the order dated 9-4-1954, had not been communicated to the petitioner, and, therefore, he did not deserve the punishment which was inflicted upon him.

In this connection, I may refer to a case of 'The Queen on the prosecution of Harris v. Smith, Clerk' (1844) LJ QB 166 (J). In this case, a clerk of the parish had been dismissed by the Vicar because during the divine service the clerk had behaved in "an indecent and unbecoming manner" with the purpose of exciting laughter, and thereby he did excite laughter in some of the congregations and by his conduct made the vicar ill and obstructed him in the performance of his duties, and also because the clerk had on several previous occasions appeared to the church drunk and intoxicated, and by reason of his drunkenness was unable to say the "responses" in a decent and becoming manner.

This clerk was reproved several times and during the celebration of the Lord's Supher the clerk made an indecent disturbance at the altar. He was asked to leave the communion table but he refused to depart and continued to make noise and disturbance, and these acts having been committed within the view of the Vicar and in his presence, the clerk was removed from his office. The clerk had applied for mandamus.

Lord Denman, C. J. while dealing with the return made by the Vicar to the effect that there was necessity of acting upon his own impression and that the vicar possessed such power of dismissal for offences committed in his own presence and this power was 'exemplified by the punishment summarily inflicted, in courts of justice, for contempt, and by convictions on the view by Magistrate, under the Highway Act." In answer to the contentions raised by the Vicar, the learned Chief Justice observed as follows:

> "We believe that the practice In the former of these supposed cases is, for the Court to call upon a party charged with contempt for his defence, and to give him an opportunity of denying or explaining it, before any punishment is awarded. We apprehend also that a Magistrate empowered to convict upon the view, ought first to call upon the offender. However rapid the proceeding, there must be time for stating the charge and for receiving some answer.
>
> A driver seen riding upon his waggon is, prima facie, a fit subject for punishment but if he showed that he was compelled to do so from a sudden fit of illness, or from some accident which prevented him from walking, he would avoid the penalty. If it were otherwise, still we should think that sentence of removal from a freehold office ought to be preceded by some inquiry, in which the accused person would have an opportunity of bearing a part in the argument.....If required to explain his behaviour, the culprit might have convinced the Vicar, that what appeared to be highly-incorrect ought not to incur severe censure, much less expulsion from his office. This principle appears to us valuable to the Judge, whom it tends to secure against dealing too hastily, from his own first impression, and we think it indispensable in all cases to the due administration of every judicial power".

I also find the following passage in Maxwell on Interpretation of Statutes, Ninth Edn. at page 370':

> "An Act which empowered a bishop, when it appeared to his satisfaction either from his own knowledge or from proof laid before him that the duties of a benefice were inadequately performed, to require the incumbent to appoint and pay a curate, and if he failed to comply within three months, himself to make the appointment and to fix the stipend, was considered as importing the same condition of giving a hearing before exercising the power and, therefore, as not authorising the bishop, even when acting on his own personal knowledge, to issue the requisition (which was in the nature of a judgment) without having given the holder of the benefice an opportunity of being heard".

In the case of 'Shyamlal v. State of uttar pradesh' MANU/SC/0134/1954 (K), the following passage occurs:

> "There can be no doubt that removal -- I am using the term synonymously with dismissal --generally implies that the officer is regarded as in some manner blame-worthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties, as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds therefore, involve the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer".

This passage occurs in another context -- whether compulsory retirement is equivalent to dismissal or removal from service but I have quoted this passage just to show that removal of a person from some office implies that the conduct of that particular person is in some manner blame-worthy or deficient, but before action is taken upon such grounds, the person should be given an opportunity to controvert those charges and explain the same.

In the case of 'Gopi' Kishore Prasad v. State of Bihar' MANU/BH/0094/1955 (L) which was the case of discharge of a Sub-Deputy Collector on probation, it was contended by the petitioner that, according to the explanation to Rule 49, Civil Services (Classification, Control and Appeal) Rules, the discharge of a probationer, whether during or at the end of the period of probation, for some specific fault or on account of his unsuitability for, the service, amounts to removal or dismissal within the meaning of Rule 49. This claim of the petitioner was negatived, but it was observed as follows:

> "It is a matter of general principle that a person should not be condemned on ex parte statements and no order of removal or discharge should be passed - against a Government servant unless he has been given a real and effective opportunity of refuting the statements upon which his notice of discharge is based. This follows from the principle of law embodied in the maximum 'audi alteram partem'. It is true that the final order of discharge of a probationer is an administrative act but the proceedings leading to that final order are quasi judicial in character and the principle embodied in the maxim 'audi alteram partem' therefore applies to such proceedings".

Although in the above extract reference is made to a Government servant, in my judgment, however, such safeguards apply even to cases of persons in the position of the petitioner in the present case, although he is not a Government servant. This observation, quoted above, was based upon the case of 'Board of Education v. Rice' (1911) A.C. 179 (M); and in that case at page 182 of the report it was observed as follows:

> "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts.
>
> I need not add that in doing either they must act in good faith and 'fairly listen to both sides', for that is a duty lying upon every one who decides anything....They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view".

The important words have been underlined by me (here into ' '). In my judgment these two authorities show quite clearly that the District Judge, in the present case, should have given an opportunity to the petitioner to be heard before passing the order dispensing with his services. The Registrar had given his note to the effect that the petitioner was guilty of gross indiscipline inasmuch as he had disobeyed the orders of the District Judge.

Before acting upon that note, the District Judge had to ascertain the facts giving rise to the inference of indiscipline on the part of the petitioner, and he should have given an opportunity to the petitioner to show cause and explain his conduct. In the case of MANU/BH/0096/1955 (C), this Court had come to the same decision.

The question raised there was whether the services of the petitioner in that case were terminated by way of penalty as a disciplinary measure or his services were terminated according to the terms of his contract, and it was held that the services of the petitioner were terminated by way of penalty. While dealing with this matter, Das, C. J. observed as follows:

> "It is obvious, therefore, that the postal authorities acted against the petitioner by way of penalty for misconduct or misbehaviour. It should be manifest that before the authority concerned was satisfied that the charge had been proved, the petitioner should have been given an opportunity of disproving the charge; furthermore, the petitioner should have been given an opportunity of showing cause against the action proposed to be taken against him".

I have quoted this observation of his Lordship not for the reason that it applies entirely to the present case, but merely for the purpose of establishing that if an action is taken by way of penalty for misconduct or misbehaviour, the person against whom the action is proposed to be taken should be given an opportunity of disproving that charge. I am alive to the position that was a case of a Government servant, though holding a temporary appointment, and Article 311 of the Constitution applied to that case.

19. The question, therefore, is whether this Court having held that the petitioner was removed from his services by way of penalty for gross disobedience of the order of the District Judge, should interfere by issuing an appropriate writ under Article 226 of the Constitution. I have not the slightest hesitation in holding that while acting under the provisions of Rule 8, referred to above, the District Judge had to decide whether the work of the petitioner was "inaccurate" or "in other respects unsatisfactory".

I also feel convinced that if the petitioner was to be given an opportunity of being heard before the final orders were passed, and if he was not given that opportunity, the order of the District Judge is liable to be quashed by issuing a writ of certiorari. In the case of MANU/SC/0095/1954 (I), while dealing with the powers of High Courts under Article 226 of the Constitution, on a review of several authorities, their Lordships of the Supreme Court held that one of the grounds on which the writ of certiorari would issue was

> "when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice".

In 'Veerappa Pillal v. Raman and Raman Ltd.' MANU/SC/0057/1952 it was held by the Supreme Court that

> "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record".

under Article 226 of the Constitution the writ should be issued. It is needless to multiply authorities, and I take it as established law that if a body of persons or officers, whose duty is to decide upon certain matters, decides that matter against a person, without giving that person a chance of being heard, violates the principles of natural Justice; and, therefore, that order is amenable to a writ of certiorari. The

petitioner in the present case is, therefore, entitled to have the order of the District Judge dated 22-4-1954 quashed.

20. Learned Advocate-General, however, submits that the petition having been made against the then District Judge of Patna and the then Registrar of Civil Courts, Patna, who are no longer in their respective offices, and the present incumbent of these offices having not been made parties to this application, no writ can issue at all, and he relies upon the case of MANU/WB/0160/1955 (H). In that case, the petition for a writ of mandamus was made against a certain. Government official in his personal name, and he had ceased to hold that office by reason of his transfer.

It was held that no effective order could be passed against him and hence the proceeding should be dismissed as infructuous, and that on general principles it is not possible to substitute the official who succeeds to the post as respondent in his place. With the greatest respects to their Lordships, I am unable to agree with this view.

If a particular officer has been made a party in his official capacity and if this Court, acting under Article 226 of the Constitution, is of the opinion that the order passed by that officer in his official capacity is amenable to any of the writs mentioned in Article 226 of the Constitution, it will be merely putting premium upon technicalities to deny justice in such a case to dismiss the application because the official concerned has ceased to fill in that office by transfer or otherwise.

After all, the order is passed by the officer not in his personal capacity but in his official capacity, and, therefore in case he is transferred and somebody else takes his place, the order could be quashed and proper orders made upon the succeeding officer in place of the officer transferred. In the above noted case of MANU/SC/0095/1954 (I), the petitioner under Article 226 of the Constitution, had asked for quashing the order of an Election Tribunal after the Tribunal had become 'functus officio', and while dealing with this question as to whether a writ of certiorari for quashing the order of the Tribunal could issue, or not, it was held by the Supreme Court as follows:

> "The writ for quashing is thus directed against a record, and as a record can be brought up only through human agency, it is issued to the person or authority whose decision is to be reviewed. If it is the record of the decision that has to be removed by certiorari, then the fact that the tribunal has become 'functus officio' subsequent to the decision could have no effect on the jurisdiction of the Court to remove the record.
>
> If it is a question of issuing directions, it is conceivable that there should be in existence a person or authority to whom they could be issued, and when a certiorari other than one to quash the decision is proposed to be issued, the fact that the tribunal has ceased to exist might operate as a bar to its issue. But if the true scope of certiorari to quash is that it merely demolished the offending order, the presence of the offender before the Court though proper, is not necessary for the exercise of the jurisdiction or to render its determination effective".

It was held that under the provisions of the relevant Act, after an Election Tribunal becomes 'functus officio', the records of the Election Tribunal are kept by the relevant Chief Judge or the District Judge, and that the Court can send for the records from such authorities. In my opinion also, in the present case, the records of the

petitioner's case are with the District Judge of Patna, and, as a matter of fact, although the opposite party are no more in their respective offices, the records had been produced before us and the order could be quashed by this Court if proper case is made out.

If, as I hold, the petitioner is entitled to have the order quashed, his petition cannot be defeated by technical considerations of form and procedure. In this connection, it may be mentioned that the petitioner, almost at the fag end of the hearing of his case, has made an application for impleading the present incumbents of the offices of the District Judge of patna and the Registrar of Civil Courts, Patna, as parties to this application. I do not think that it is at all necessary in the view which I have taken to add these officers as parties to the application.

21. There is still another matter to which our attention was called. It was said on behalf of the opposite-party that this Court may quash the order of 22-4-1954, dispensing with the services of the petitioner, but his name has been struck off from the list of copyists in the Copying Department attached to the District Judge of Patna, and, therefore, unless the present District Judge is commanded to restore the name of the petitioner on the list maintained by him, no useful purpose will be served by merely quashing the order, and that, as the present District Judge of Patna is not a party to this application, the order of restoring the name of the petitioner on the list cannot be given effect to.

This contention of the learned Advocate-General must be repelled as being without substance. If the name of the petitioner has been removed from the list of copyists appointed by the District Judge under the provisions of the Patna High Court General Rules and Circular Orders, Civil, Volume I, in consequence of the order passed by the then District Judge on 22-4-1954, the name of the petitioner must automatically be restored on the list if the order of the District Judge dispensing with his services is quashed. If that order is quashed, as it is done by this order, then all subsequent acts in consequence of that order must also be set aside.

22. Before I leave this matter, I would like to observe that the question whether a copyist, including a typist, is transferable from one Copying Department to another Copying Department is, to-say the least, very doubtful. According to Rule 1 at p. 113 of the General Rules and Circular Orders, Civil, Volume I, at 'stations' where there are more Courts than one, there has to be one amalgamated Copying Department, and that Copying Department must have as many copyists as may be required under Rule 2, Rule 4 further provides that the number of copyists should not be greater than would admit, in ordinary circumstances, each copyist earning a particular standard of remuneration; and the note to Rule 4 says that, until the-above standard has been worked up to, no new appointment is to be made.

From this rule, it appears that a number of copyists appointed to a particular Copying Department are to serve only the particular Copying Department to which they have been appointed, and the expression "at stations" cannot mean a judgeship of which the District Judge is in charge. If there are a number of stations within one judgeship, there must be so many numbers of Copying Departments. Therefore, it is extremely doubtful whether one copyist attached to a particular Copying Department can be transferred against his will to another Copying Department, though both the Copying Departments may be under the same judgeship. I, however, do not like to decide this question as it is not relevant for the purpose of deciding the matters raised before us.

23. In the result, I would allow this application quash the order of the District Judge., dated. 22-4-1954, dispensing with the services of the petitioner as a typist attached to the Copying Department of the District Judge of patna and all other acts in pursuance of this order are also hereby set aside. In the circumstances of this case, however, each party will bear his own costs.

Vaidynathier Ramaswami, J.

24. In this case the petitioner Bhawani Sahay has moved the High Court for grant of a writ in the nature of certiorari for calling up and quashing the order of the District Judge of Patna dated 22-4-1954, discharging the petitioner from service. Cause has been shown by the learned Advocate-General on behalf of the District Judge of Patna and the Registrar, Civil Courts, Patna, who have been impleaded as respondents and upon whom notice of the application has been ordered to be given.

25. The petitioner was appointed as an English Copyist by the District Judge of Patna in the year 1936. He was confirmed in that appointment on 2-5-1942. The appointment was made by the District Judge of Patna under the provisions of Rule 4 of Chap. II, Part IV, of the High Court's, General Rules and Circular orders, Civil Volume I.

On 2-3-1954, an order was made calling upon the petitioner to join the establishment of the Munsif's Court at Bihar. The order for transfer was communicated to the petitioner on 6-3-1954. Two days later the petitioner filed an application for leave and prayed for permission to join at Bihar on 21-4-1954. The application was rejected by the District Judge on the same date. The case of the petitioner is that he was not informed of the order of the District Judge upon his leave application.

But there is a counter-affidavit on behalf of the respondents that the petitioner was apprised of the order of the District Judge in question. It appears that the petitioner joined at Bihar on 21-4-1954, but on the next day there was an order made by the District Judge removing the petitioner from service because he was guilty of wilful disobedience of orders.

26. On 22-4-1954, the Registrar of the Civil Courts, Mr. H. N. Sinha, sent to the District Judge the following note:

> 'District Judge,
>
> B. Bhawani Sahay (English copyist) was suspended under order dated 29-1-1954 for two months and the suspension was to begin from 9-2-1954. By an order dated 2-3-1954 Babu Bhawani Sahay was ordered to join Bihar Sharif after expiry of the aforesaid suspension period. Thus Babu Bhawani Sahay had to join Bihar Sharif as an English copyist on 9-4-1954 under order dated 2-3-1954. He put in a representation dated 13-3-1954 against the transfer order which was rejected by your order dated 2-4-1954.
>
> The said order was communicated to him on the same date and the representation bears an endorsement of Babu Bhawani Sahay that he received copy of the order and the said endorsement is dated 2-4-1954. Letter No. 167 dated 14-4-1954 of Munsif, Bihar Sharif, may be perused. It appears from the said letter that Babu Bhawani Sahay did not join Bihar Sharif as an English copyist till 14-4-1954 and no information of his joining thereafter has been received up till now.

It is thus clear that Babu Bhawani Sahay deliberately disobeyed the orders of transfer which by Itself, Is highly unsatisfactory and tantamounts to gross misconduct. Rule 8 of the G. R. C. O., Civil, Part I, Chapter II at page 118 may be perused, and under the said rule if the work of a copyist is unsatisfactory in other respects the service of such a copyist should be dispensed with.

A { I would submit that the disobedience of order shows indiscipline and gross misconduct and I would submit that the service of Babu Bhawani Sahay may be dispensed with under the rules if approved. The order may take effect at once.

Sd/- H. N. Sinha,
Registrar, 24-4-1954."

Upon this note the District Judge passed the following order:

"I have had thorough discussions with Registrar and have seen the connected papers. I am more than satisfied that Mr. Bhawani Sahay should no longer be retained not only because of his having disobeyed orders, but also in the interest of the administration of the judgeship. His previous record is most unsatisfactory. As at A.

Sd/- S. N. Imam.
D. J. 24-4-1954."

27. The case of the petitioner is that the order of the District Judge dated 22-4-1954, removing the petitioner from the post of a typist was penal in character and as a matter of law the petitioner should have been given opportunity of showing cause before the District Judge made the order of discharge.

It was also contended on behalf of the petitioner that his son became untraced and so the petitioner had applied for leave to the District Judge on 8-4-1954, with permission to join his duties at Bihar on 21-4-1954, as the petitioner had to take steps to inform the police and to search for his son. It was also argued that there was a violation of Article 311 of the Constitution, and the order of discharge made by the District Judge of Patna on 22-4-1954, was illegal and ultra vires.

28. The application was heard in the first instance before a Bench constituted of Rai and Sinha JJ. who did not agree as to how the question at issue should be decided. It was held by Sinha J. that the order of the District Judge re- moving the petitioner was a quasi-Judicial order and, therefore, the petitioner was entitled to notice and to be given a hearing. Sinha J. held that the order of the District Judge was illegal since no notice was given and no hearing was granted to the petitioner.

Accordingly, Sinha J. held that a writ in the nature of certiorari should issue to quash the order of the District Judge dated 22-4-1954. Rai, J. however, expressed a contrary view. He was of the opinion that the order of the District Judge was administrative order and was not judicial or quasi-judicial in character. No question of natural justice was, therefore, involved, and the principle of 'audi alteram partem' was not applicable.

The learned Judge, therefore, considered that the petitioner had not made out a case for grant of writ of certiorari. I should state that both the learned Judges held that the

petitioner was not a member of the Civil Service of the Union or the State & that he did not hold a "Civil Post" within the meaning of Article 311 of the Constitution. Therefore, the provision of that Article with regard to the dismissal or removal was not applicable.

29. In view of the difference of opinion, this case has been placed before me for decision under Clause 28 of the Letters Patent. The learned Judges have formulated the following question of law upon which they have differed: "Whether under the circumstances of this case a writ in the nature of certiorari should be issued?"

30. On behalf of the petitioner, the argument put forward was that the order of the District Judge dated 22-4-1954, discharging the petitioner was not a purely administrative order. It was contended that the proceeding for the discharge of the petitioner under R 8 was quasi-judicial in character and the petitioner, was entitled to a notice and to a hearing before the District Judge made the order of discharge. It was submitted that provisions of Rule 8 were punitive in character.

It was also contended that as a result of the order of the District Judge the petitioner was deprived of earning his livelihood. In my opinion, the argument advanced on behalf of the petitioner must be accepted as correct. Rule 8 at page 114 of the High Court's General Rules and Circular Orders, Civil, Volume I, is in the following terms: "The services of copyists whose work is inaccurate or in other respects unsatisfactory should be dispensed with". Rule 4 is also important in the connection. Rule 4 states:

> "The number of copyists appointed must not be greater than will admit, under ordinary circumstances, of each Vernacular copyist earning at least Rs. 50 and of each English Copyist earning at least Rs. 100 per month. If the average earnings fall regularly below this rate steps should be taken to reduce the establishment.
>
> Note: No new appointment is to be made in an office until the above standard has been worked up to".

It was contended by the learned Advocate-General that the petitioner was not employed in a permanent capacity and it was open to the District Judge to dispense with his service in his unfettered discretion. The contention was put forward that the petitioner was a mere licensee and, that his tenure was highly precarious. I do not consider that this submission is quite correct.

Rule 1 at page 113 of the General Rules and Circular Orders, Civil, Volume I, provides that at stations where there are more Civil Courts than one there Shall be one amalgamated Copying Department. According to Rule 2 the Copying Department shall have as many copyists as may be required for the purpose of supplying all applicants with copies without inconvenient delay.

Rule 4 provides that the number of copyists appointed must not be greater than will admit, under ordinary circumstances, of each vernacular copyist earning at least Rs. 40/- and of each English Copyist earning at least Rs. 80/- per month. If their earnings fall regularly below this rate, steps should be taken to reduce the establishment. The note to this rule provides that no new appointment should be made in an office until the above standard has been worked up to.

Reading all these rules in the context of Rule 8, it is clear that the position of the copyist is not the position of a licensee, and the copyist once employed in the

Copying Department is entitled to continue to work as copyist so long as his work is not inaccurate or in other respects unsatisfactory. The copyist may also be discharged under the provisions of Rule 4 if the earnings fall below the prescribed rate and the District Judge decides to reduce the establishment.

As I have already stated, the provisions of Rule 8 are penal in character. The admitted position in the present case is that the petitioner was removed by the District Judge of Patna for two reasons, namely, disobedience of the order of the District Judge transferring him to Bihar, and, secondly, because his previous record of service was unsatisfactory. On behalf of the opposite party the Advocate-General addressed the argument that there is no provision under Rule 8 requiring the District Judge to give notice to the petitioner or to grant him a hearing before dispensing with his service.

The argument is correct, but there is as a matter of law the necessary implication in Rule 8 that some kind of enquiry must be made by the District Judge before he satisfies himself that the work of the copyist was inaccurate or in other respects unsatisfactory. That is a necessary implication as a matter of law in the provision of Rule 8.

This opinion is borne out by the authority of a decision of this Court in Ramnath Prasad v. Collector of Darbhanga MANU/BH/0085/1955 (O). It was held in that case that in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply that some form of enquiry must be made and the person affected should be given a fair opportunity of presenting his case. At page 347 of the report it has been observed as follows:

> "Section 42, therefore, grants power to the Collector or to the prescribed authority to cancel or suspend, a licence. But the statute does not prescribe what is the procedure that the Collector has to adopt before passing final order. In a case of this description when the statute is silent what procedure will the law imply? Even if the statute is silent there is an obvious implication that some form of enquiry must be made for the section requires the Collector to satisfy himself that there has been a breach of the conditions of the licence by the holder or any of his servant.
>
> The Collector is bound as a matter of principle to give a fair opportunity to the licensee of presenting his case. The Collector is under a duty to hear the matter in a judicial spirit for the question at issue is a matter of proprietary or professional right of an individual. The Collector should for instance give a fair opportunity to the licensee to make a relevant statement or to controvert any relevant statement made to his prejudice.
>
> Apart from this, the Collector is not required to decide the question at issue as if he were sitting as a Court of law. He is not pound to follow all the procedural requirements of a formal trial. It is sufficient if the Collector gives a fair opportunity to the licensee to present his case and to state his view-point. On the question whether a fair opportunity has been given no general test can be formulated which would be applicable to all conditions. The question would depend very much on the particular facts of each case."

In the present case, therefore, it is clear that though Rule 8 is silent as to the procedure to be followed by the District Judge before discharging the copyist, there is a necessary implication as a matter of law that notice should be given to the party

affected and a hearing should be granted.

It is admitted in the present case that no notice was given to the petitioner before the District Judge made the order of discharge on 22-4-1954. It follows, therefore, that there was a violation of the principle of audi alteram partem in this case, and the order of the District Judge dated 22-4-1954, is illegal and liable to be quashed by a writ in the nature of certiorari.

31. In the course of his argument, the learned Advocate-General referred to the Supreme Court decision MANU/SC/0034/1950 (G). The question debated in that case was whether the decision of the Government taken under Section 3 of Bombay Ordinance No. 5 of 1947 that land should be requisitioned for public purpose was of administrative or quasi-judicial character and whether a writ of certiorari could be issued to quash a decision of the Provincial Government. The material statutory provision was Section 3 of the Bombay Land Requisition Ordinance (5 of 1947) which was to the following effect:

> "3. Requisition of land: If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose:
>
> > Provided that no land used for the purpose of public religious worship or for any purpose which, the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section."

It was held by a majority of the Judges of the Supreme Court that the opinion of the State Government as to the existence of public purpose was of subjective character and cannot be questioned in a Court of law. As a matter of construction of the language of the statutory provision in that case, it was held by a majority of the Judges that the opinion of the State Government on the matter of public purpose was not justiciable in a Court of law and there was no judicial element in it. At page 227 of the report Kania C. J. states:

> "Keeping aside for the moment the proviso to the section it is not seriously disputed that the subjective opinion of the provincial Government in respect of the order of requisition is not open to challenge by a writ of certiorari. The Ordinance has left that decision to the discretion of the Provincial Government and that opinion cannot be revised by. another authority. It appears therefore that except when mala fides are clearly proved, that opinion cannot be questioned.
>
> The next question is whether the requirement 'for any public purpose' stands on the same footing. On behalf of the appellant, it was argued that the opinion of the Government, that it is necessary or expedient to pass an order of requisition, stands on the same footing as its decision on the public purpose. In the alternative it was urged that the two factors, viz., necessity to requisition and decision about public purpose, form one composite opinion and the composite decision is the subjective opinion of the Provincial Government.
>
> The third alternative contention was that the decision of the Government about a public purpose is a fact which it has to ascertain or decide, and thereafter the order of requisition has to follow, The decision of the

> Provincial Government as to the public purpose contains no judicial element in it."

It was further observed by Fazl Ali J. in that case that the Ordinance was in the nature of an emergency measure and the intention of the legislative authority was that the Provincial Government should take prompt action. It is obvious that the principle of the decision of this case cannot be applied to the present case.

The material statutory provision in the present case is quite different, and for the reasons that I have already given I hold that the power of removal exercised by the District Judge is not purely administrative but quasi-judicial in character and notice should be given to the copyist by the District Judge before discharging his service under the provisions of Rule 8 at page 114 of the General Rules and Circular Orders, Civil, Volume I.

32. Two other cases also were referred to by the learned Advocate-General in support of his argument, namely, R. v. Metropolitan Police Commissioner; Ex parte Parker 1953 AER 717 (P) and Ex parte Fry 1954 All ER 118 (Q). In the first case, the Commissioner of the Metropolitan Police had revoked the licence of a cab driver, because he was satisfied that he was not a fit person to hold a licence.

The Commissioner, however, directed the applicant to appear before the licensing committee to be confronted with two police constables who had made complaints about him. At the sitting of the committee the applicant denied the allegations made by the constables and wished to call & witness in support of his denial, but he was not allowed to do so. The committee reported to the Commissioner of Police that the licence of the applicant was properly revoked. The applicant then moved the High Court for a writ of certiorari.

The ground of the application was that he was not allowed by the committee to call a witness in support of his case. It is manifest that in this case the Commissioner of Metropolitan Police had made an enquiry and had given an opportunity to the cab driver to show cause before cancelling his licence. There was hence no violation of the principle of natural justice, and the principle of this decision cannot apply to the present case where the material facts are wholly different.

In the other decision 1954 All ER 118 (Q), a fireman employed in a fire brigade was 'cautioned' by Ms superior officer, because he refused to clean the uniform of the superior officer. The petitioner applied for a rule in the nature of certiorari on the ground that he was not given a hearing by the Chief Fire Officer who administered the caution.

Lord Goddard C. J. refused to grant a writ on two grounds, namely, (1) that the Chief Officer was not acting in a judicial or quasi-judicial capacity, and (2), that the remedy was discretionary in the Court and, in the special circumstances, the application ought not to be granted. Against this decision, the matter was taken by the petitioner to the Court of appeal.

The Court of Appeal expressly reserved their opinion on the question whether the Commissioner of Police was sitting in a judicial or quasi-judicial capacity, but the Lord Justices refused the writ on the ground that the applicant was a member of the fire service which was of great public importance and in a question concerning the discipline of the fire service the King's Bench ought not to lightly intervene. That is the ratio of the decision in this case. It is obvious that neither of the English

authorities has any relevancy to the decision of the present case.

33. A point was taken on behalf of the respondents that the petitioner had impleaded Mr. Naqui Imam, District Judge of Patna, and Mr. H. P. Sinha, Registrar, Civil Courts, who are no longer in their respective offices. It was argued that the present incumbents of these offices have not been made parties to the application and, so no writ can be granted at all. I am unable to accept this submission as correct.

In the present case the petitioner has applied for a writ in the nature of certiorari, and in the case of such a writ, it has been held by the Supreme Court, the jurisdiction to quash the order impugned can be exercised, even though the party who made the order has become functus officio. That is the view of the Supreme Court in MANU/SC/0095/1954 (I). In the course of his judgment Venkatarama Ayyar J. observed:

> "The writ for quashing is thus directed against a record, and as a record can be brought up only through human agency, it is issued to the person or authority whose decision is to be reviewed. If it is the record of the decision that has to be removed by 'certiorari', then the fact that the tribunal has become 'functus officio' subsequent to the decision could have no effect on the jurisdiction of the Court to remove the record. If it is a question of issuing directions, it is conceivable that there should be in existence a person or authority to whom they could be issued, and when a 'certiorari' other than one to quash the decision is proposed to be issued, the fact that the tribunal has ceased to exist might operate as a bar to its issue. But if the true scope of 'certiorari' to quash is that it merely demolishes the offending order, the presence of the offender before the Court, though proper, is not necessary for the exercise of the jurisdiction or to render its determination effective."

In the present case also, the records have been called for from the District Judge of Patna, and as the records have been produced before this Court, I see no valid reason why the High Court should not quash the order if a proper case has been made out on behalf of the petitioner, it was also contended by the learned Advocate-General that in pursuance of the order of the District Judge dated 22-4-1954, the name of the petitioner has been struck off from the list of copyists in the Copying Department attached to the District Judge of Patna and, therefore, there should be an order upon the present District Judge of Patna to restore the name of the petitioner in the list maintained by him. I do not think that such an order is necessary to be passed by the High Court in this application. It may be that the same of the petitioner has been removed from the list of copyists appointed by the District Judge at Patna as a result of the order passed by the District Judge on 22-1-1954. But the name of the petitioner would stand automatically restored if a writ of certiorari is issued to quash the order of the District Judge of Patna dated 22-4-1954. If the order by the District Judge 22-4-1954, is quashed, it must follow as a matter of law that all consequential action in pursuance of that illegal order must stand vacated. The effect of the writ of the certiorari would, therefore, be that the name of the petitioner would stand automatically restored to its previous position in the register of copyists. I do not, therefore, think that there is any substance in the argument of the learned Advocate-General on this point.

34. For these reasons, I hold that there has been a violation of the principle of audi alteram partem, and in the circumstances a writ in the nature of certiorari should be issued to quash the order of the District Judge of Patna dated 22-4- 1954. I would

accordingly answer the question of law formulated by the Division Bench. I agree, in substance, with the conclusions reached by Sinha J. though not exactly for the same reasons I regret that I have reached a conclusion different from that of Rai J.