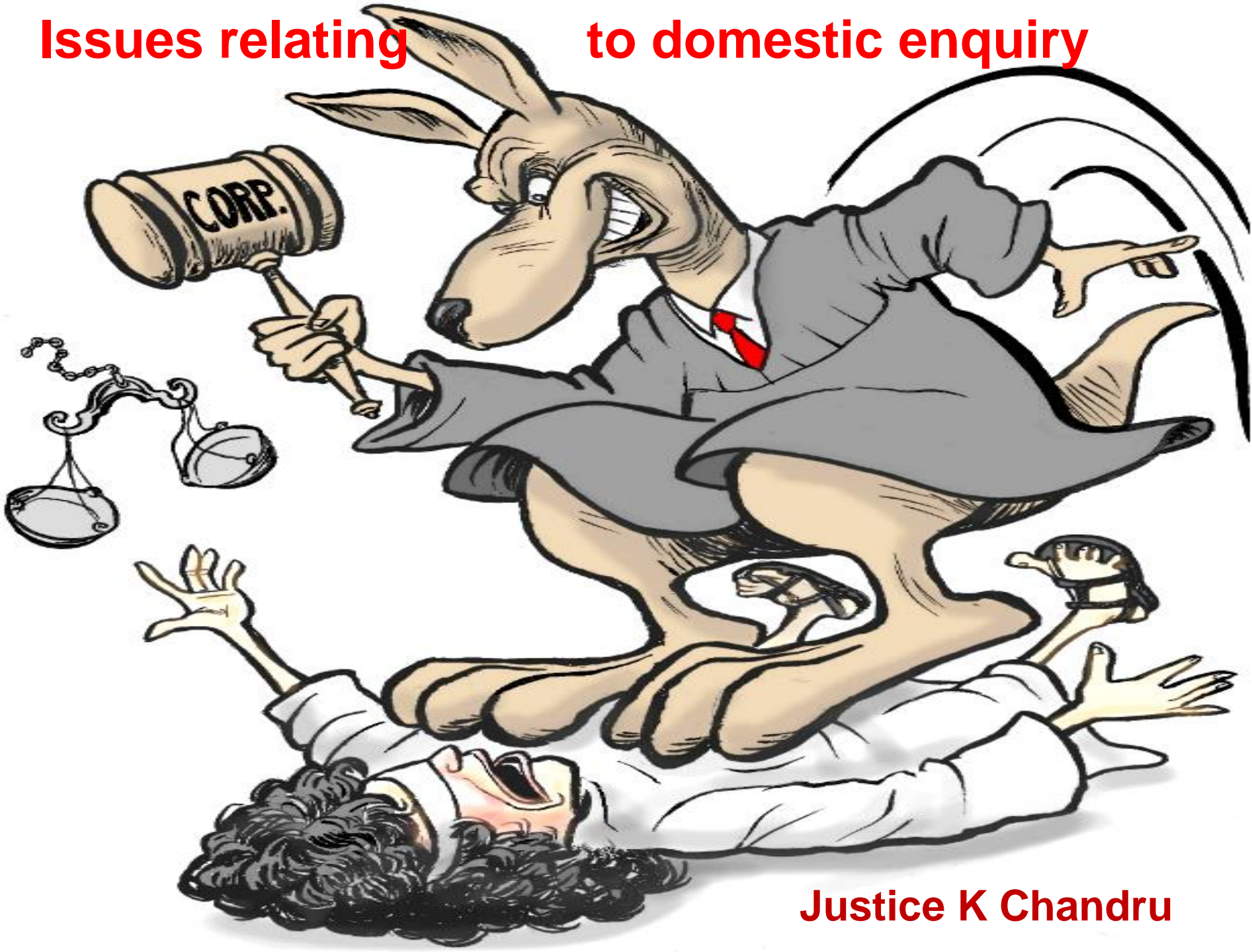


Issues relating

to domestic enquiry



Justice K Chandru

Why a domestic enquiry?

- a. Laaissez-faire (free trade)
- b. Hire and Fire
- c. Henry VIII Clause
- d. Contract
- e. Standing Orders
- f. Service Rules

A decorative border surrounds the text, featuring a black wavy line with alternating red hearts and green flowers with yellow centers.

Industrial Employment (Standing Orders) Act, 1946

- 1. Sec 3 – Certification of Standing orders**
- 2. Sec 12A- Application of Model Standing Orders**

Constitution of India

PART XIV

Article 311 :

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1) omitted

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

Minimum Principles of Natural Justice

What it means?

The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him.

- This is the barest requirement of an enquiry of this character and this requirements must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him.

Meenglas Tea Estate Vs. Its Workmen

AIR 1963 SC 1719

- 1. Framing of charges**
- 2. Confession / Admission of charges**
- 3. Appointment of enquiry officer**
- 4. Appointment of Presiding Officer**
- 5. Appointment of defence representative**
- 6. Whether lawyer can be engaged to defend**
- 7. Adjournments**
- 8. Defence evidence**
- 9. Findings**
- 10. Showcause notice on the findings in case the enquiry officer is different from disciplinary authority.**
- 11. Final order**

Nature of Evidence

- "It is well settled that in a domestic enquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility
- It has been consistently held by the Supreme Court in a domestic enquiry the misconduct need not be proved beyond all reasonable doubt, but if there are preponderance of probabilities, that is enough for holding a person guilty of misconduct"

State of Haryana vs. Rattan Singh
1977 (2)SCC 491= =1982 (1) LLJ 46

Subsistence allowance

Denial of subsistence allowance will not vitiate the enquiry unless the workman proves prejudice.

**Indira Bhanu Gaur Vs. Committees,
Management of MM Degree College & Ors.
2004 (1) SCC 281**

THANK YOU

