

(1977) 02 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 838 of 1968

A.R. Joshi

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 18-02-1977

Acts Referred:

Citation : (1980) 41 FLR 315 : (1977) ILR Delhi 750 : (1978) 1 LLJ 48

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : S.C. Malik and I.N. Shroff, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) On December 24, 1951, the petitioner A. R. Joshi, was employed by the Imperial Bank of India as a cashier and teller. On January 1, 1953, he was confirmed in that post. In 1955 the State Bank of India Act (Act 23 of 1955) (the Act) was passed. The State Bank was constituted to carry on the business of banking and to transfer to it the undertaking of the Imperial Bank of India (Section 3(1)). The service of existing officers and employees of the Imperial Bank of India was transferred to the State Bank (section 7). The petitioner's services were also transferred.

(2) On August 27, 1962, the petitioner was promoted to the post of head cashier and was posted at Dalhousie .That very day he executed a contract of service.

(3) In 1967 the bank found that the petitioner had permitted drawings without adequate stock in cash credit accounts to two firms, namely, M/s. Teja Singh & Sons and Industrial Saw Mills and had valued pledged stocks at rates higher than the market rates. The bank thought that the petitioner had acted beyond the scope of his authority. On March 27, 1967, he was suspended. On June 10, 1967, a charge sheet was served on him. On June 22, 1967. the petitioner sought particulars of the grounds on which the charges were brought against him. He also called for the investigation report. The bank on September 8, 1967 supplied

the particulars of the charges" but refused to supply the investigation report on the ground that the same will be made available to him after the Local Board had considered it to be a fit case for imposing the penalty of "requiring the employees to resign" or "dismissal" as provided in Rule 39 clauses (e) and (f) of the Service Rules.

(4) The petitioner submitted his reply to the charges on September 19, 1967. He also made a request that he may be allowed to be present at the enquiry to cross-examine the witnesses proposed to be produced against him and to produce witnesses in his own defense. The bank turned down the request on September 29, 1967 but enquired from him if he wanted to be heard in person. On November 29, 1967, the petitioner was given a personal hearing.

(5) On April 12, 1968, the bank informed the petitioner that it was proposed that he should be dismissed from service under Rule 39(f). A copy of the report dated March 5, 1967; submitted by the Investigating Officer Shri M. N. Muttu in terms of Rule 40(1) of the Service Rules together with the depositions of witnesses examined by the Investigating Officer was furnished to the petitioner. This was the stage of second show cause notice. The petitioner was given an opportunity to state why the penalty of dismissal be not imposed on him. He submitted his reply on May 9, 1968. On September 6, 1968 the bank dismissed him from service.

(6) These are the relevant background facts. On November 1, 1968 the petitioner brought this writ petition under Article 226 of the Constitution of India for a writ of certiorari to quash the dismissal order dated September 6, 1968.

(7) The basic submission of the petitioner's counsel is two-fold. Firstly, it is said that the order of dismissal is a nullity as the principles of natural justice were not observed in this case. Secondly, it is contended that the Local Board of the bank which passed the order of dismissal was not competent to do so and Therefore the dismissal order is without jurisdiction.

(8) The petitioner's stand is that his case being a case of public employment, the bank was bound to observe the principles of natural justice. It was said that the Local Board exercises quasi-judicial powers in the matter of dismissal and since dismissal order has adverse civil consequence, an employee is entitled to a full hearing and the observance of the principles of rules of natural justice. It was contended that as the principles of natural justice were not followed the petitioner was entitled to an order of reinstatement. This is the claim of the petitioner.

(9) At this stage it is necessary to notice section 43 of the Act.

"43.(1) The State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions, and determine the terms and conditions of their appointment and service.

(2)The officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board."

(10) This section clearly gives power to the bank to appoint officers and employees and to "determine the terms and conditions of their appointment and service."

(11) The bank has framed what are called State Bank of India (Sub-Accountants and Head Cashiers) Service Rules (Service Rules). These Rules came into force on January 1, 1959. They apply to all Sub-Accountants and Head Cashiers who are taken in the service of the bank. On August 27, 1962, when the petitioner was promoted to the position of a head cashier and posted at Dalhousie he was asked to make a declaration in writing. On that day he signed a declaration saying

"I hereby declare that I have received from the Bank a copy of the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules and having read and understood them, I hereby subscribe and agree to be bound by the said Rules."

(12) This clearly shows that the petitioner was governed by the Service Rules. Now Service Rules prescribe the procedure for disciplinary action against an employee who is guilty of misconduct. Rules 39 and 40 are the relevant rules in this regard.

(13) The bank conducted an inquiry into the petitioner's misconduct in accordance with these Rules. They first caused an inquiry to be made by their own officer Mr. M. N. Muttu. On March 5, 1967 the Investigating Officer submitted his report. Thereupon the petitioner was suspended. The power of suspension is given to the bank under Rule 42. Then a charge sheet was served on the petitioner on June 10, 1967. He sought particulars. He also asked for the investigation report. The particulars of the transactions which were the subject matter of the charge were furnished to him but the investigation report was denied. The petitioner filed a reply to the charge-sheet. He also requested for an opportunity to cross-examine the witnesses and to tender in evidence in his own defense. This request was not granted. He was heard personally in his own defense. After consideration the Local Board came to the conclusion that it was a fit case in which the penalty of dismissal ought to be imposed. The second notice was served on the petitioner on April 12, 1968 to show cause why the penalty of dismissal be not awarded. The petitioner submitted his reply. The Local Board of the bank was not satisfied. They dismissed the petitioner.

(14) The petitioner's main grievance is that the principles of natural justice were violated in his case. Counsel formulated his submissions as follows:

1. That the Service Rules are contrary to natural justice.
2. That the Investigating Officer did not examine the witnesses in petitioner's presence.

3. That the petitioner was not allowed to cross-examine the witnesses.
4. That the petitioner was not allowed to produce his defense.
5. That the material against the petitioner was collected at his back.
6. That the petitioner was not allowed to participate in the enquiry conducted by the Investigating Officer.
7. That after the service of the second show cause notice the petitioner was not afforded any opportunity to adduce evidence and rebut the case of the bank against him.

(15) The petitioner's case is that though he was granted a hearing on November 29, 1967 it was a limited hearing", as he called it, in as much as investigation was made in his absence and no opportunity was given to him to produce witnesses and material in his own defense. The sole question is: Was the enquiry made in terms of Rules 39 and 40 of the Service Rules had and the resulting dismissal a nullity ?

(16) It is not disputed that the petitioner on August 27, 1962 agreed to be bound by the Service Rules. Nor is it denied that the enquiry was conducted in accordance with Rules 39 and 40. What is being argued is that the Service Rules themselves are contrary to natural justice as they do not provide for an inquiry in the presence of the petitioner and for an opportunity to adduce evidence.

(17) Counsel contended that in cases of public employment principles of natural justice must be observed. He referred me to the decision of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and in particular to the following observation of Ray CJ.

" WHENEVER a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute."

(18) I was also referred to Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , Sayeedur Rehman Vs. The State of Bihar and Others, , State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh, , Shri Bhagwan and Another Vs. Ram Chand and Another, , The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons, and several other rulings in support of the proposition that the bank was bound to observe the principles of natural justice in the inquiry against the employee. Counsel frankly conceded that he did not base his case on the statutory Regulations framed by the bank. He mainly relied on the rules of natural justice and contended that their non-observance was the real issue to be decided in the case.

(19) Before I proceed further let me examine the nature and characteristics of a

contract of employment both in private law and public law.

CONTRACT of Employment at common law

(20) The rule that an employer can arbitrarily discharge an employee with or without regard to the actuating motive is a rule settled beyond doubt. This is a relic of the Roman institution of pater families. [Sukhdev Singh's case (supra) at p. 1358]. What are the incidents of the relationship of master and servant at common law? These can be conveniently summarised as follows :

(1) No reasons need be given for dismissal. The servant cannot complain of dismissal even had it been decided upon for an inadequate reason or for an erroneous reason or even for no reason.

(2) Principles of natural justice have no part to play.

(3) Power to appoint or dismiss is not a judicial power but an administrative power.

(4) There cannot be reinstatement as the law does not permit specific performance of a contract of service [Specific Relief Act (1963) Ss. 14, 10, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000]

(5) Remedy is in damages for breach of contract

PUBLIC Employment

(21) With the growth of public corporations it was soon recognised that the law ought to recognise an obligation, upon the employer to provide a good procedure concerning his right of dismissal. Common law of the contract of employment failed to impose procedural standards upon the disciplinary process. At common law the master had an absolute right of dismissal subject to a claim of damages if the servant was able to prove breach of contract. Statute intervened in favor to the employee. As against the master the employee was weaker of the two. The State by statute imposed restrictions on the termination of contracts of employment as it has imposed restrictions on landlords who wish to terminate tenancies.

(22) The principles of public and administrative law have eroded the traditional private law concept of master and servant a great deal in modern times. (See Journal of the Indian Law Institute-Jan.- March 1976 p. 8). The statute restricted the employer's right of dismissal. If the purported dismissal was in violation of the statutory safeguards it could be declared ultra vires a statutory body. The statute conferred a special status. It conferred a particular security of tenure. Courts both in England and India recognised that certain types of employees have the benefit of a specially protected status which justified a declaration of invalidity of wrongful dismissal and in certain types of employment wrongful dismissal may be treated as ultra vires the employing body and void upon that ground.. The result was that the wrongfully dismissed employees were granted declarations that their dismissal was null and void and that they continued to

remain in service. Hitherto the entrenched position at common law was that no such declaration will be made, because the wrongful dismissal is effective to terminate the contract of employment. The statute reversed this position. It introduced an important, and apparently widening group of exceptions to the common law rule. The well recognised exceptions so far are :

(I)where a public servant is sought to be removed from service in contravention of Article 311 of the Constitution.

(II)where a worker is sought to be reinstated on being dismissed under the industrial law, and

(III)where a statutory body acts in violation of the mandatory provisions of the statute. [See M. R. Freedland- The Contract of Employment (1976) pp. 279-290].

(23) Applying the public law principles the courts will today grant a declaration holding a wrongful dismissal null and void where the dismissed; person is entitled to a special protection of his security of tenure. By making a declaration the courts enforce and recognise the legal protection of security of employment. The wrongfully dismissed employees remain employed under the contracts of employment. This is as if the contract of employment had never been terminated. The Supreme Court has said :

" THE remedy of declaration should a ready-made instrument to provide reinstatement in public sector,"

(PER Mathew J. in Sukhdev Singh's case).

(24) The House of Lords showed recently in *Malloch v. Aberdeen Corporation* (1971) 1 Wlr 1578 how fine the dividing line may be between an ordinary contract of employment and a specially protected status.

(25) This case concerned a Scottish teacher employed by a local education authority subject to statutory provisions for prior discussion by the authority of any motion to dismiss a teacher, with three weeks' notice to the teacher of the meeting at which the dismissal was to be considered. It was held by a bare majority (Lords Reid, Wilberforce and Lord Simon; Lords Morris and Guest dissenting) that these statutory safeguards impliedly conferred upon the teacher the right to a hearing before dismissal, which right in turn conferred a protected status upon the employee, such that a dismissal not complying with that condition was to be invalidated by the remedy of reduction of the dismissal (which is the remedy in Scottish law corresponding to invalidity of dismissal).

(26) A comparative list of situations in which persons have been held entitled or not entitled to a hearing, or to observation of rules of natural justice, according to master and servant test, looks illogical and even bizarre. In England a specialist surgeon has been denied protection which is given to a hospital doctor; a University professor, as a servant, has been denied the right to be heard, a dock labourer and an undergraduate have been granted it. (See *Barber v.*

Manchester Regional Hospital Board (1958) 1 W.L.R. 181 , Palmer v, Inverness Hospitals Board of Management 1963 S.C. 311 , Vidyodaya University Council v. Silva (1965) 1 W.L.R. 77 , Vine v National Dock Labour Board; (1957) A.C. 488 , Glynn v. Keela University (1971) 1 W.L.R. 487.

(27) The Privy Council decision in Vidyodaya University case (supra) has come in for severe criticism. The House of Lords refused to follow it. (See the speech of Lord Wilberforce in Malloch's case). Mathew J. did not approve of this decision in Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, . He preferred to follow Malloch's case.

(28) In India in S.B. Dutt Vs. University of Delhi, the Supreme Court held that the University professor was not entitled to reinstatement as no specific implement of the contract of employment could be ordered as the law did not permit it. Similarly in Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, it was held that the terms contained in the contract of the teachers were purely contractual and had no statutory force. But in Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, the court on the other hand held that the University statute had the force of law and this governed the contract of the teacher. A dismissal in contravention of such a provision was held to be ultra vires.

(29) In S.R. Tewari Vs. District Board Agra and Another, the district board passed a resolution terminating the services of the appellant. He challenged the action of the Board. The court emphasised that

" THE powers of a statutory body are always subject to the statute which has constituted it, and must be exercised consistently with the statute and the courts have, in appropriate cases, the power to declare an action of "the body illegal or ultra vires, even if the action relates to determination of employment of a servant."

(30) It was held that the courts will declare an act of a statutory body invalid

" IF by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

VINE'S case (supra) was followed.

S.R. Tewari Vs. District Board Agra and Another, , Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, , Calcutta Dock Labour Board Vs. Jaffar Imam and Others, . Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, and Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, establish that the dismissal of a servant by statutory bodies in breach of the provisions of the statutes or orders or schemes made under the statute which regulate the exercise of their power is invalid or ultra virus and the principle of pure master and servant contractual relationship has no application to such cases.

(31) In *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, the court held that the college was a non-statutory body and that the plaintiff's case did not fall within any of three exceptions to the rule of non-enforceability of contract of service. In exercise of discretion the court refused to grant declaration or injunction. This decision was followed by the Supreme Court in *Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another*, .

(32) The relevant case law was helpfully reviewed by the Supreme Court in *Sukhdev Singh's case (supra)*. The basic question in each case is

" WHETHER the public authority is acting as an ordinary employer who has the power to dismiss his employees subject to payment of damages for any breach of contract or whether it has only a statutory power of dismissal which is restricted by the statute."

(H.W.R. Wade-Administrative Law 3rd ed. p. 122).

(33) How do we answer this question ? By examining the legal basis of employment. Is it a pure master and servant case or a case of statutory employment ? The answer to the question will depend on "the framework and the context of employment" as Lord Wilberforce said in *Malloch's case (supra)*. Natural Justice in statutory corporations

(34) The principles of natural justice apply to corporations. The statutory regulations or procedural safeguards embody the requirements of natural justice. In *Calcutta Dock Labour case (supra)* Gajendragadkar Cj said :

"IN cases where a statutory body or authority is empowered to terminate the employment of its employees, the said authority or body cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice." (p. 286)

(35) Similarly in *Mafat Lal Barot's case* the termination order against the employee of the State Road Transport Corporation, a statutory body, was held violative of the principles of natural justice as no opportunity of hearing was given to the employee before dismissal.

(36) It is in statutory employment that the rules of natural justice have a part to play. The legislative enactment itself or the Regulations framed in exercise of delegated power of legislation prescribe that a reasonable opportunity to show cause must be given to the employee before he is dismissed. If the statutory corporation is in breach of this mandatory obligation e.g. it does not hear the employees or does not follow the prescribed procedure the courts will declare the order of dismissal as invalid.

(37) The corporation is the creature of the statute and the statute it must obey. If it disobeys the statute it acts illegally. This is what Ray Cj has said in *Sukhdev Singh's case (supra)*. Similarly employment in the corporate sector is the theme

of Mathew J.

(38) Without the support of the statute the employee cannot appeal to the majestic conception of natural justice. But if he is fortified by statute he can claim a declaratory judgment or a certiorari in defense of his right to be heard. Natural justice is nothing else but fair play in action. The corporation must act fairly towards its employees. The acid test that has been applied is whether what had been done was fair.

(39) This is the significant advance made in recent years in the field of public corporations. This is the great gain of the statutory servant over a private employee. It cannot be denied that the principles which the phrase "natural justice" enshrines have, particularly in recent years in the field of administrative law, been valiantly and beneficently applied to defeat wrongful and inconsiderate exercises of power. (See 1973 Current Legal Problems p. 4).

(40) Now to sum up: an employee in a corporation cannot be denied appropriate remedies of administrative law and if the dismissal is contrary to the mandatory provisions of the statute or in disregard of the principles of natural justice the dismissal can be declared void for a dismissal without good reasons may vitally affect a man's career or his pension.

(41) (THE instant case) Do these principles apply to the case in hand ? Is it a case where the petitioner enjoyed a protected status ? Can his case be truly called a case of public employment to which the appropriate remedies of administrative law are attracted. In my opinion, his case does not fall within the rubric of public employment.

(42) The doctrine of public employment arose because large corporations enjoy vast powers. As Mathew J. said in Sukhdev Singh's case :

" THE problem posed by the big corporation is the protection of the individual rights of the employees."

(43) The common law give an absolute right to the employer to dismiss the employee summarily. It was this failure to provide sufficiently adequate protection which led ultimately to the introduction of the procedural safeguards. The doctrine of ultra virus was introduced in order to check the arbitrary action of the corporation. If the purported dismissal was ultra virus a statutory body it would be declared invalid. Thus the employee came to enjoy a special status, that is to say, it gave him an interest of a proprietary nature distinct from the ordinary contractual interest under a contract of employment. The statute conferred a particular security of tenure on him inasmuch as that if the mandatory provisions of the statute were not complied with the court granted a declaration of invalidity of the action of the statutory body. This was laid down in England in the leading case of *Vine v. National Dock Labour Board*, 1957 A.C. 488. This reasoning is explicit in the judgment of Barry J. in *Price v. Sunderland Corporation* 1 W.L.R. 1253 where he says :

" A local authority or any statutory body cannot-either employ or dismiss servants except under statutory authority; their powers are derived from the statute or statutes under which they are created, and it is a well known principle of law that statutory powers can only be exercised for the purposes for which they are granted."

(44) This wide view of the power of the courts to review dismissals of employees of public authorities on the grounds of ultra virus "has now been accepted by the Supreme Court. Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, which took a narrow view has now happily been overruled.

(45) The question at once arises: Does the Act confer upon the " petitioner a protected status relationship between an employer and employee distinct from the ordinary contractual interest under a contract of employment ? In my opinion section 43 of the Act docs not confer any status on the petitioner and Therefore he cannot claim an administrative law remedy. The Act gives power to the bank to appoint officers and other employees and "determine the terms and conditions of their appointment and service." The section imports the common law into the statute by providing that the bank shall have freedom of action in the matter of employment of officers. No model terms and conditions are laid down in the statute which the bank is obliged to follow. They may employ officers on such terms as they think proper. The employees so appointed cannot claim a protected status. The Act does not confer any.

(46) It is true that the bank is an instrumentality of the State, an "authority" within the meaning of Article 12 of the Constitution. This is now settled by the Supreme Court decision in Sukhdev Singh's case. The bank is a public corporation. It is of course a public authority and its purposes no doubt are public purposes. It carries on business of public importance. But the legislature in its wisdom has not chosen to confer any protected status on those who are engaged by the bank under s. 43.

(47) True it is that the bank has framed "Service Rules". But to call these rules "Service Rules" is in a sense misleading. They are not framed under any statute. They do not have the force of law. They have not been approved by the Central Government. The bank has got Regulations (State Bank of India General Regulations 1955) made in exercise of powers conferred by sub-s.(3) of S. 50 of the Act, by the Reserve Bank of India with the previous sanction of the Central Government. Applying the ratio of Sukhdev Singh's case these Regulations are in the nature of delegated legislation and they have the force of the statute. But it is not so with the Service Rules. They are very much like an agreement of service as is entered into by a private employer with a private employee. Under the Service Rules the employee cannot complain of the breach of statutory provisions. No statutory provisions are applicable to him. His appointment rests in contract. No statutory status has been conferred. His contract is governed by the non-statutory Service Rules. Nothing more nothing less.

(48) Natural justice in pure master and servant cases In a case of a contract of employment between a master and servant the principles of natural justice cannot be invoked. This is settled by a number of decisions. The employer is under no obligation to allow the employee a hearing before the dismissal. In the words of Lord Reid in *Bidge v. Baldwin* (1964) A.C. 40 ;

" THE question in a pure question of master and servant does not at all depend on whether the master has heard the servant in his own defense, it depends on whether the facts emerging at the trial prove breach of contract;"

(49) In *Malloch v. Aberdeen Corporation* (1971) 1 W.L.R. 1578 (8) Lord Reid said :

" AT common law a master is not bound to hear his servant before he dismisses him. He can act unreasonably or capriciously if so chooses but the dismissal is valid. The servant has no remedy unless the dismissal is in breach of contract and then the servant's only remedy is damages for breach of contract."

(50) In *Vasudeva Pillai v. City Council of Singapore*, (1968) 1 W.L.R. 1278 the Privy Council said that :

" THE relationship of master and servant or employer and employee gives rise to no application of the principle of audi alteram partem on dismissal."

(51) It appears to me that a dismissal which takes place, assuming it to be in breach of the Service Rules such as are applicable in the present case, cannot be declared null and void because the contract was in a sense nothing more than an ordinary contract between a master and servant despite the statutory flavour attaching to it. The court will refuse to declare invalidity of wrongful dismissal in the ordinary case of employer and employee because a contract of personal service cannot be specifically enforced. An employee cannot be forced upon an unwilling employer. In the leading decision of *Vine v. National Dock Labour Board* (1957) A.C. 488 Lord Keith brought out the distinction between common law and the statutory employment in these words :

" NORMALLY, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful, but could only " sound in damages."

(52) Supreme Court Case of *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, . In *Sukhdev Singh's* case the Regulations provided inter alias for the terms and conditions of employment, scales of pay etc. of the employees of the corporation concerned. It was held that in the case of corporations (Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation) these Regulations were imperative. Since the Regulations were framed under the parent statute which gave it the power to

frame Regulations defining the terms and conditions of employment, the Regulations were "prescriptive and statutory". As Ray Cj said :

" THE employees of these statutory bodies have a statutory status and they are entitled to a declaration of being in employment when their dismissal or removal is in contravention of statutory provisions."

(53) In the course of his judgment the learned Chief Justice said:

" THE noticeable feature is that these statutory bodies have no free hand in framing the terms and conditions of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the regulations. The statutory bodies are not free to make such terms as they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissing employees."

(54) A little later he said :

"...a regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of the operations. The doctrine of ultra virus as applied to statutes, rules and orders should equally apply to the regulations and any other subordinate legislation."

(55) Apply the principles enunciated above to the present case. It is clear that the Service Rules do not have the force of law. The bank has a free hand in framing the terms and conditions of the employees. There are no regulations determining the conditions of service. Under the Act the bank is free to make a contract of service with head cashiers and accountants on such terms as they like. This right is not hedged with any statutory restrictions. Assuming the Service Rules are in breach of the principles of natural justice the petitioner cannot complain. There are two answers. Firstly, the Service Rules bind him. He took the employment on these terms. Such are the terms of his engagement. Secondly, the Act does not confer on the petitioner any status or any such rights for the enforcement of which he can prey in aid the administrative law remedies of certiorari or mandamus.

(56) The State Bank of India was established by s. 3 of the Act, as I have said. Under s. 17(1) of the Act the general superintendence and direction of the affairs and business of the State Bank shall be entrusted to the Central Board which may exercise all powers and do all such acts and things as may be exercised or done by the State Bank (and are not by this Act expressly required to be done by the State Bank in general meeting). Under s. 2(b) Central Board means the Central Board of Directors of the State Bank. The composition of the Central Board is provided by s. 19. The Central Board of the State Bank could Therefore determine the terms and conditions of the employment and service of employees. The Service Rules were passed by the Central Board on November 28, 1958 and came into force on January 1, 1959. They constitute the terms and

conditions of the employment and service contemplated by s. 43.

(57) Now s. 21 of the Act as originally enacted in 1955 provided for Local Boards. Before amendment it read thus:

"21.LOCAL Boards And Local COMMITTEES

(1)There shall be constituted at each place where the State Bank has a local head office, a Local Board which shall consist of the following members namely :-

XXxx xx (3)A Local Board..... shall exercise such powers and perform such functions and duties as Central Board may assign to the Local Board."

(58) Section 21 was amended by Act No. 35 of 1964. Even after such amendment the position of Local Board remains unchanged as will be seen from sections 21(1) and 21B.

(59) Under Rule 7 of the Service Rules, Local Board is the appointing and confirming authority in so far as employees serving in a circle are concerned. Since the petitioner was working in Dalhousie branch the Local Board there on August 27, 1962, took decision to appoint the petitioner to the post of head cashier. The petitioner gave a written declaration agreeing to be bound by the Service Rules. The Local Board confirmed the petitioner's appointment on March 9, 1967 after a successful completion of six months probation. Local Board being the appointing authority it had also the power to dismiss. Rule 40 gives power to the Local Board to impose any of the penalties set out in Rule 39. I cannot find any invalidity in the action of the Local Board. Local Board was competent to initiate proceedings against the petitioner and take action against him.

(60) But if the Local Board does not follow the Service Rules an employee can complain of breach of contract. He can claim damages in a suit. But he cannot obtain a declaration of nullity because of non-availability of the specific performance. Nor can a writ be issued where the matter rests in contract. (See Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others,).

(61) It is not the petitioner's case that there are any statutory regulations which are applicable to him. Nor has he argued that there is a breach of Service Rules. All that was said was that the Service Rules themselves are ultra virus as they are in breach of the principles of natural justice and any action taken in accordance with them must also be held to be invalid. I cannot accept this. The Act does not confer a protected status on the petitioner. His appointment was based on an ordinary contract of employment which was embodied in the Service Rules and to which he willingly gave his consent. He cannot exalt the Service Rules to the status of statutory safeguards or Regulations such as were in existence in the case of other corporations before the Supreme Court in Sukhdev Singh's case. In that case the body employing the man was under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds upon which it can dismiss them. Those were not cases of straight forward relationship of master and servant. The man had a status

supported by statute.

(62) The State Bank no doubt is a public corporation, but in a vital respect it differs from Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation. The Act does not give to the employees of the State Bank such security of tenure as is guaranteed by the statutory regulations in those cases. Why is it so? It is not for the court to answer. A statute is the will of the legislature. The court cannot question its wisdom. It will be for Parliament to alter any of the statutory provisions if some change is thought to be desirable.

(63) Conclusion The principal complaint of the petitioner is that the action of the bank in dismissing him from service is contrary to the rules of natural justice. This complaint is not well founded. In the field of the common law of contract principles of natural justice have no part to play. Natural justice is closely bound up with the development of protected status. If in the relation of master and servant there is an element of public employment, there is support by statute, and there is a statutory status which is capable of protection the rules of natural justice can properly be invoked. Essential procedural requirements will then have to be observed, and failure to observe them may result in a dismissal being declared null and void.

(64) In the present case the petitioner holds no public employment position fortified by a statute. No statutory safeguards have been conferred upon him. He has no specially protected status, In the absence of a statutory status he cannot invoke the principles of natural justice. The petitioner's case is one of ordinary employment. He cannot have the protection which appertains to public employment.

(65) Here the only question is whether the petitioner can assert that his dismissal was a nullity. In my view he cannot. There was no situation in which it could be said that any principles of natural justice were violated. Ifs. 43 is a true description of the terms of employment, as I think it is, it seems to me that must be an ordinary contract of service. The petitioner cannot complain that the bank was in breach of duty in not hearing him. He cannot contend: that he was not given audience. The administrative law remedy of certiorari has no application.

(66) I am glad to find that a division bench of this court has reached the same conclusion in the case of another head cashier of the State Bank as I have done. (See Ved Prakash Malhotra v. State Bank of India (1974) 1 Delhi 660 Malhotra's case, it is true, was decided before the pronouncement of the Supreme Court in Sukhdev Singh's case. But I do not think I am compelled by that authority to take a contrary view.

(67) For these reasons I would dismiss the petition. The parties are, however, left to bear their own costs Petition dismissed.