

(1967) 06 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Original Order No. 201 of 1966

Commissioners for the Port of Calcutta

APPELLANT

Vs

Baleswar Singh

RESPONDENT

Date of Decision : 12-06-1967

Acts Referred:

Calcutta Port Act, 1890 — Section 3(2), 30, 30(1), 31, 31(1)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15, 16, 17, 18
Constitution of India, 1950 — Article 136(1), 226, 311, 311(2)
Government of India Act, 1915 — Section 96B
Municipal Corporation Act, 1882 — Section 191(4)
Penal Code, 1860 (IPC) — Section 147, 323
Preventive Detention Act, 1950 — Section 3(1)

Citation : 71 CWN 786 : (1968) 1 ILR (Cal) 22

Hon'ble Judges : Sinha, C.J.; Arun K. Mukherjea, J

Bench : Division Bench

Advocate : Ginwalla, T.K. Basu and R.K. Mitra, for the Appellant; A.P. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, C.J.—The facts in this case are shortly as follows: The Respondent in this case was at all material time employed as a sub-gunner by the Port Commissioners, a statutory body formed under the Calcutta Port Act, 1890 (hereinafter referred to as the "said Act"). On January 5, 1961, the Respondent and several other employees of the Port Commissioners were convicted under Sections 147 and 323 of the Indian Penal Code. Section 147 deals with rioting and Section 323 is voluntarily causing hurt. The Respondent was sentenced to a fine of Rs. 30 u/s 147, I.P.C., in default, to undergo rigorous imprisonment for three weeks, and a fine of Rs. 30 and u/s 323, I.P.C., in default, to undergo rigorous imprisonment for three weeks. On March 28, 1963, the Respondent was suspended from service and on April 9, 1963, he was served with an order passed by the Traffic Manager dated April 4, 1963, removing him from service.

The said order is set out below:

Whereas Sri Baleswar Singh, sub-gunner, was convicted on a criminal charge under Sections 147 and 323, I.P. Code, and sentenced to pay a fine or in default to undergo rigorous imprisonment on 5.1.61 which was confirmed by the Appellate Court.

And whereas it is considered that the conduct of the said Sri Baleswar Singh which led to his conviction is such as to render his further retention in service undesirable.

Now, therefore, the Dy. Chairman directs that the said Sri Baleswar Singh, sub-gunner, should be removed from service.

2. On or about April 30, 1963, the trade union, to which the Petitioner belongs, wrote a letter to the Deputy Chairman of the Port Commissioners making a request that the said order be reconsidered on the ground that the offence, of which the Petitioner had been convicted, did not involve moral turpitude, nor relate to his work or his place of work. In answer to this letter a reply was given by the Secretary to the Port Commissioners on August 26, 1963, stating that the procedure followed by the Commissioners in dealing with cases of employees convicted of a criminal charge was in line with the procedure adopted by Government, and an employee convicted on a criminal charge is removed from service only when the offence considered is such as to render further retention in the service, *prima facie*, undesirable. It was rightly pointed out that conviction for rioting and voluntarily causing hurt did involve moral turpitude. Thereupon, the Respondent made an application to this Court under Article 226 of the Constitution, and a Rule was issued on December 10, 1963, calling upon the Respondents to the said Rule to show cause why an appropriate writ should not be issued directing the withdrawal or cancellation of the said order of removal and whether other reliefs mentioned in the petition should not be granted. This matter having come before Basu, J., he held by his judgment dated March 9, 1966 Reported in (1966) 70 C.W.N. 786: (i) that on the relevant date the Port Commissioners had not framed any rules and there could not be any removal; (ii) that there was a violation of the rules of natural justice and, as such, the order was invalid. The Rule was made absolute.

3. It is against this order that this appeal is directed. In the first place it will be necessary to consider the provisions of the said Act. The said Act is an Act to consolidate and amend the law relating to the port of Calcutta and to the appointment of the Commissioners for the said port. u/s 4, the duty of carrying out the provisions of the said Act is vested in a body of Commissioners called "Commissioners for the Port of Calcutta", which is a body corporate. Section 30 of the said Act is in the following terms:

30. (1) The Commissioners shall, from time to time prepare, and in meeting sanction, a schedule of the staff of employees whom they shall deem it necessary and proper to maintain for the purposes of this Act.

(2) Such schedule shall also set forth the amount and nature of the salaries, fees, and allowances which the Commissioners in meeting sanction for each such employee.

Provided that artisans, porters and labourers, and sirdars of porters and labourers, shall not be deemed to be employees within the meaning of this section or of Section 31 (except Clauses (g) and (h) thereof), Section 32 or Section 33 of this Act.

4. The power to frame rules is contained in Section 31. The relevant provision is as follows:

31(1). The Commissioners in meeting shall, from time to time, frame rules-

* * *

(i) for regulating the recruitment, promotion, conduct discipline, punishment and any other matter relating to the terms and conditions of service applicable to the employees of the Commissioners, or allotment of premises to them or their rights and their privileges, not covered by any of the foregoing clauses.

Section 32(1) of the said Act is in the following terms:

Subject to the provisions of the Schedule, for the time being in force, sanctioned by the Commissioners u/s 30 and of the rules framed u/s 31 and also to the provisions of Section 34, the power of appointing, promoting, granting leave to, suspending, fining, reducing or dismissing, or of disposing of any other question relating to the services of the employees of the Commissioners including the power of dispensing with the services of any employee otherwise than by reason of the misconduct of such employee shall be exercised, in the case of employees whose maximum monthly salary exclusive of allowances is less than one thousand rupees, by the Chairman or the Deputy Chairman and in every other case, by the Commissioners in meeting.

5. I think that it cannot be disputed that the Commissioners for the Port of Calcutta, being a statutory body, must act according to the statute of incorporation. See *London County Council v. Attorney-General* (1902) A.C. 165 and *S.R. Tewari Vs. District Board Agra and Another*, . In the last mentioned case, Shah, J. said as follows:

Powers of the 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, power to declare a body illegal or ultra vires, even if the action relates to the determination of employment of a servant.

6. Let us now come to the facts of the present case. The Respondent was employed by the Commissioners for the Port of Calcutta. He was convicted under Sections 147 and 323 of the Indian Penal Code and sentenced to a fine of Rs. 30 u/s 147, I.P.C., in default, to undergo rigorous imprisonment for three weeks and a fine of Rs. 30 u/s 323, I.P.C., in default, to undergo rigorous imprisonment for

three weeks. He was first of all suspended and then, by an order issued by the Traffic Manager, was removed from his service. It is not disputed that he was not given any notice to show cause or in any way heard in his defence. That this is a violation of the rules of natural justice is obvious. The question is whether, by such violation, the order of termination of the Respondent's service has been vitiated and whether he can ask for redress in the writ jurisdiction.

7. That at the relevant time the Commissioners for the Port of Calcutta had not framed any rules u/s 31(1) is not disputed. The question is whether the Appellants had adopted the rules that have been promulgated by the Central Government. Prima facie an employee of the port of Calcutta is an employee of a statutory body but not of a Government or a Governmental authority. He is, therefore, not a "civil servant". A civil servant is entitled to protection under Article 311 of the Constitution. The rules which are applicable to civil servants are also in conformity with it. Normally, a civil servant cannot be dismissed or removed without being given an opportunity of showing cause in his defence. If the Appellants adopted these rules, then no employee of the Commissioners could be dismissed from service without giving him a like opportunity. As regards civil servants, however, there are special provisions contained in the Central Civil Servant (Classification, Control and Appeal) Rules, 1957. The relevant Rule is Rule 18 and is set out below:

Special procedure in certain cases. Notwithstanding anything contained in Rules 15, 16 and 17-

(i) where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or (ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure the Disciplinary Authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

Provided that the Commission shall be consulted before passing such order in any case in which such consultation is necessary.

The "Commission" means the Public Service Commission.

8. It will be observed that if this Rule is applicable in the present case then, in the case of a penalty imposed on the ground of conduct which has led to conviction on a criminal charge, the Disciplinary Authority is entitled to pass such orders as it thinks fit and no formal show cause notice is necessary. Mr. Chatterjee, appearing on behalf of the Respondent, has not disputed the fact that if Rule 18 is applicable the result would be as stated above, but his argument is that the Central C.S. (C.C.A.) Rules do not apply, so that Rule 18 contained therein has no application to the facts of the case. It might be mentioned here that now the Port Commissioners have made or adopted rules covering the

matter under consideration. These, however, have no retrospective effect and need not be considered. As there was a considerable dispute between the parties as to whether the Central C.S. (C.C.A.) Rules, 1957, applied to the employees of the Port Commissioners, we directed supplementary affidavits to be filed. Nanda Dulal Chakravarty, a Joint Secretary of the Port Commissioners, has affirmed an affidavit dated March, 1967, in which all the necessary facts have been stated and documents annexed. It appears that on November 26, 1921, the Chief Accountant of the Port Commissioners wrote to the Chairman a note which is annex. "A" to the said affidavit. This was a request to obtain sanction of the Commissioners in a meeting, to the adoption, from the date they will come into force, viz., January 1, 1922, of the fundamental rules framed by the Secretary of State under the Government of India Act. On November 29, 1921, the Chairman of the Finance and Establishment Committee gave a note stating that the Government of India had issued a complete set of fundamental rules u/s 96B of the Government of India Act, and proceeded to state as follows:

These fundamental rules cover all the main conditions of service except those relating to pensions and lay down certain provisions in regard to pay, dismissal and suspension, compulsory retirement and resignation, leave and leave allowances. Although, of course, there is much included in them which is not directly applicable to the Port Commissioners' service, it seems a suitable and convenient arrangement to accept the principles laid down in these rules as applicable to the Calcutta Port Trust and it is expected that all ordinary contingencies can be met by a reference to the Government practice as detailed here....

A copy of the said note is annexed to the said affidavit and marked "B".

9. Thereupon, the Finance and Establishment Committee met and by their report dated December 12, 1921, a copy whereof is annex. "C" to the said affidavit, recommended the adoption in general of the Government rules governing the conditions of service. A relevant extract is given below:

A meeting of the Finance and Establishment Committee was held on Monday, the 5th December, 1921, at 3 p.m. to consider with reference to the Chairman's note, dated 29th November, the proposed adoption of the Fundamental Rules issued by the Government of India u/s 96B of the Government of India Act. All members of the Committee were present.

2. The Committee unanimously recommend the adoption in general of the Government rules governing the conditions of service, being of opinion that these will form a suitable and convenient standard for employee of the Port Trust.

10. It then proceeds to state about certain exceptions that should be allowed, but we are not concerned in this case with the same. The report concluded by stating that the sanction of the Secretary of State should be obtained. On December 12, 1921, the Port Commissioners held their 1831st meeting in which following resolution was passed:

Resolution No. 1096-Resolved that, subject to the sanction of Government, the report of the Committee be adopted.

A copy thereof is annexed "D" to the said affidavit.

11. Thereupon, the Chairman of the Port Commissioners wrote to the Secretary to the Government of Bengal as follows:

I have the honour to forward herewith an extract (Resolution 1096) from the Proceedings of the 1831st meeting of the Commissioners held on the 12th December, 1921, from which it will be seen that, subject to the sanction of Government they resolved to adopt the report of their Finance and Establishment Committee who unanimously recommend the adoption in general of the Government Fundamental Rules governing the conditions of service, Rule 86 being omitted in the case of Port Trust employees.

They further recommend that the conditions of special rules be made applicable to all officers appointed under covenant in England and such other officers as draw salaries of not less than Rs. 800 per mensem.

The sanction of Government u/s 3(2) of the Calcutta Port Act is requested to the general rules with the exception of Rule 86 adopted by the Commissioners with effect from the 1st January, 1922, and to the limiting of the application of the special leave rules as proposed by the Commissioners.

12. On January 19, 1922, the sanction of the Government was communicated to the Port Commissioners. The relevant part of it was as follows:

With reference to your letter No. 15509 dated the 20th December, 1921, I am directed to communicate the sanction of Government to the adoption in general by the Commissioners of the Fundamental Rules made by the Secretary of State for India in Council u/s 96B of the Government of India Act with the exception Rule 86 of those Rules with effect from the 1st January, 1922....

13. The next thing to be considered is a note dated May 16, 1939, by the Chairman of the Port Commissioners, a copy of which is annex. "G" to the said affidavit. In this note it was pointed out that the Commissioners had decided to adopt for their services, the Fundamental Rules introduced by the Government of India. These Rules regulated general conditions of the service of the employees in respect of leave and other matters. There were, however, certain matters which were not covered either by the Fundamental Rules or by the Special Rules framed by the Commissioners and it became the practice in such cases to follow the Subsidiary Rules adopted by the Government of Bengal. What the Port Commissioners should have done was to follow the Supplementary Rules made by the Governor-General in Council under the Fundamental Rules. It was recommended, therefore, that u/s 31 of the said Act, the Commissioners should adopt the Supplementary Rules of the Government of India and not the Government of Bengal Subsidiary Rules. By resolution No. 429, the Commissioners in meeting adopted the recommendation subject to sanction of

Government. This was sanctioned by Government, as appears from their letter dated June 24, 1939, a copy of which is annex. "H" to the said affidavit. By a note dated March 29, 1954, a copy whereof is annex. T to the said affidavit, the Chairman of the Port Commissioners stated that not only the Supplementary Rules should be adopted but the Fundamental Rules and Supplementary Rules as amended from time to time by Government should be adopted subject only to the provisions of the Calcutta Port Act. It was recommended, therefore, that the following Rule should be adopted:

Amendment to the Fundamental and Supplementary Rules of the Central Government which may be made from time to time will be automatically applicable to the Commissioners' employees, in so far as they can be adopted to the Port Trust requirements and are not inconsistent with the provisions of the Calcutta Port Act. The Commissioners, however, reserve the right not to adopt any rule or an amendment to any rule and they also reserve the right to frame any rule in deviation of any Government rule, subject to the sanction of the Government.

14. These recommendations were adopted by the Commissioners in meeting by resolution No. 270 dated March 29, 1954, subject to the sanction of the Government. This was sanctioned by the Central Government as appears from the communication dated May 10, 1954, a copy whereof is annex. "K" to the said affidavit.

15. The Fundamental Rules were made by the Secretary of State in Council u/s 96B of the Government of India Act and came into force with effect from January 1, 1922. In the Fundamental Rules so framed, the only provision for dismissal, removal and suspension are contained in chap. VIII, but they all relate to pay and allowances connected with dismissal, removal and suspension. The Civil Services (Classification, Control and Appeal) Rules, 1930, came into force on June 21, 1930, and applied to all civil employees of the Government of India, same as the Fundamental Rules and dealt with certain matters which were not expressly dealt with in the Fundamental Rules. The Central Government Civil Servant (Classification, Control and Appeal) Rules, 1957, came into operation on February 28, 1957. These Rules replaced (by Section 34) the Civil Services (Classification, Control and Appeal) Rules, 1930, and rules relating to Government servants in the Central services. Part VI deals with suspension and Pt. v. deals with discipline, and amongst the penalties prescribed is removal from service as well as dismissal from service. Normally (under Rules 15, 16 and 17) a civil servant shall not be dismissed or removed except after giving him a reasonable opportunity of being heard in respect of charges framed against him and after hearing representations with regard to the charges and the proposed penalty. Rule 18, however, is an exception. Reference may be made here to Article 311(2), by which no civil servant can be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken with regard to him. There is, however, a proviso

that this clause shall not apply 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. Rule 18 follows proviso (a) to Article 311(2) of the Constitution. The position, therefore, is as follows: If Rule 18 applies, then there is nothing further to be said. The Respondent has been convicted of a criminal charge and, therefore, according to Rule 18 no show-cause notice is necessary. In other words, there need not be a charge-sheet drawn up followed by departmental proceedings. The plea that the charge did not involve moral turpitude seems to be irrelevant, although very clearly the charge in this case, of rioting and causing voluntary hurt, involve moral turpitude of a serious nature. An employee of the Port Commissioners is not a civil servant under the Government. He is an employee of a statutory authority, namely the Commissioners for the Port of Calcutta, created u/s 4 of the said Act. This statutory authority has got the right given to it of employing people for carrying out their work, and of dismissing them or suspending them from service. They have also the power to frame rules for that purpose. The provisions of Article 311(2) are not attracted nor any rules applicable to Government servants attracted as such. Prima facie, therefore, there is no question of drawing up a charge or initiating departmental proceedings, but there may arise the question as to the violation of the rules of natural justice. But while the Commissioners may make formal rules u/s 31(1)(i), which are separate and self-contained, it is open to them also to adopt rules made by others and make them their own. From the facts stated above, it is quite clear that they adopted the Fundamental Rules together with all Subsidiary and Supplementary Rules thereto and all amendments thereof. Mr. Chatterjee, appearing on behalf of the Respondent, however, argues that the C.S. (C.C.A.) Rules, 1930, and the Central C.S. (C.C.A.) Rules, 1957, do not apply to them inasmuch as the Commissioners never adopted these Rules. I do not think that I am concerned in this case with the C.S. (C.C.A.) Rules, 1930, but I think that the argument of Mr. Chatterjee about Rule 18 of the Central C.S. (C.C.A.) Rules, 1957, is well-founded. From the facts stated above it appears that the Appellant adopted the Fundamental Rules and any addition, alteration thereto, or any Subsidiary and Supplementary Rules as also all amendments thereof. It has been repeatedly stated that there was a "general" adoption of the said Fundamental Rules. I do not find, however, that at any time the Appellants adopted the special provisions of Rule 18 of the Central C.S. (C.C.A.) Rules, 1957. This Rule is not a "general" rule but deals with very special circumstances. If the Appellants wished to adopt this special Rule dealing with a special subject, they would have to pass a resolution to that effect at a meeting. There is no such resolution. In *Patit Paban Bose Vs. The Commissioners for the Port of Calcutta*, *Chakravarti, C.J.* assumed that the C.S. (C.C.A.) Rules, 1930, apply. There was no argument made before the learned Chief Justice to the contrary, and in any event, he was not concerned with a special Rule like Rule 18 of the C.S. (C.C.A.) Rules, 1957. In my opinion, therefore, it has not been proved that Rule 18 of the Central C.S. (C.C.A.) Rules, 1957, was applicable in the case of the Respondent at any time.

16. We must not, however, be taken to have agreed with the learned Judge in the Court below that the Appellants could never suspend or dismiss any of their employees, until rules were made u/s 31(1) of the said Act, and we do not think that the case of *T. Cajee Vs. U. Jormanik Siem and Another*, is apposite on the point. In our opinion, Section 32(1) clearly gives that right provided, however, that the appointment was validly made and does not violate the provisions of Section 30(1). The point to be considered, however, is as to whether, if the Respondent had no right to be heard in his defence, before termination of the services under any rules made or adopted by the Appellants, did he acquire such a right by any other means?

17. Mr. Ginwalla, appearing on behalf of the Appellants, has argued that in case it is held that the C.S. (C.C.A.) Rules, 1930, or the Central C.S. (C.C.A.) Rules, 1957, are not applicable, he is in a better position, because the matter there comes within the purview of the leading case of *Ridge v. Baldwin* (1963) A.E.R. 66 which lays down the law, with regard to such matters, between master and servant. According to him, in the circumstances of the case, the master, namely the Port Commissioners, were not called upon to give any notice or hearing to the servant before removing him from service. On the other hand, Mr. Chatterjee, appearing on behalf of the Respondent, has argued that although this may be permissible in the case of an ordinary individual, in the case of a statutory authority like the Commissioners for the Port of Calcutta, an employee cannot be removed or dismissed from service without giving him notice and hearing him in his defence, for that would be a violation of the rules of natural justice and that it has been held in a Supreme Court decision in *Calcutta Dock Labour Board Vs. Jaffar Imam and Others*, , that a statutory authority in such a case is bound in law to give notice and hear the employee before passing an order of removal or dismissal. This point will have to be considered now. In *Ridge v. Baldwin* (1963) A.E.R. 66 the facts were as follows: The Appellant was a member of the Brighton Borough Police Force and was appointed the chief constable in 1956. In 1957 he was suspended from duty after he had been arrested, together with two other officers of the same police force, on charges which were subsequently the subject-matter of two indictments, one for criminal conspiracy to corrupt the course of justice and the other for corruption. The Appellant was never convicted although the other two officers were convicted. The Watch Committee dismissed him from service u/s 191(4) of the Municipal Corporations Act, 1882, but without framing a charge and hearing the Appellant. Section 191(4) of the Municipal Corporations Act, 1882, was in the following terms:

The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent, in the discharge of his duty, or otherwise unfit for the same.

Although in this section there is no provision for a hearing, by the regulation

made under the Police Act, 1919, it was provided that except in the case where the chief constable admitted that he had committed an offence which included negligence of duty, there must be a charge and a departmental proceeding. It was held that the order of the Watch Committee was invalid because the principles of natural justice had not been observed. Lord Reid said as follows:

It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether to dismiss a chief constable. So I shall deal first with cases of dismissal. These appear to fall into three classes, dismissal of a servant by his master, dismissal from an office held during pleasure, and dismissal from an office where there must be something against a man to warrant his dismissal.

The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the ground on which it can dismiss them.

18. The learned Judge then deals with the case of a man who holds an office at pleasure. In such case, of course, there is no question of being heard. The learned Judge then proceeds to say as follows:

So I come to the third class which includes the present case. There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation....

19. In the third class is included cases whereby any statute, or rules having the force of statute, it is laid down that before dismissal or removal the employee must be heard. But it also includes cases where there are no statutory provisions. For example, Lord Reid mentioned a class of cases based on the case of *Cooper v. Wandsworth Board of Workers* (1863) 14 C.B.N.S. 180 : 143 E.R. 414. It has been held there that, in cases where property rights are concerned, notice must be given and the rules of natural justice must be followed. The second class of cases is with regard to deprivation of membership of a professional or a social body. For example, *Wood v. Woad* (1874) L.R. 9 Exch. 190 deals with the expulsion of a member of a mutual insurance society without

hearing him. In *Weinberger v. Inglis* (1919) A.C. 606 we have the case of a person being excluded from the Stock Exchange without giving him a hearing. Another class of cases is trade union cases. Mr. Ginnwalla advanced his argument on the basis that the present case falls under the first heading, namely dismissal of a servant by a master, simpliciter. Mr. Chatterjee on the contrary would like to bring it under the third heading. According to him, there is an implied rule that in the case of a statutory corporation, its employee must always be given notice before dismissal or removal from office it must be said that, apart from a Supreme Court decision which he has cited, there is no other authority to support him. The Supreme Court decision cited before us is *Calcutta Dock Labour Board v. Jaffar Iman Supra*. In that case the Respondents were registered dock workers. They were detained by the Commissioner of Police u/s 3(1)(a)(ii) of the Preventive Detention Act, 1950. Even before the Appellants were released from detention, the Dock Labour Board commenced disciplinary proceedings against them. No specific action on this behalf was mentioned. The principal ground given in the notice as served was that, the Respondents had been detained for committing acts prejudicial to the maintenance of public order. The record showed that no evidence was led in the ex parte enquiry at all. Orders were passed terminating the services of the Respondents dock workers. It was held that the service of the Respondents could not be terminated without holding a proper enquiry, and without giving them show-cause notices and affording them adequate opportunity to defend themselves. Gajendragadkar, C.J. said as follows:

There can be no doubt that when the Appellant purports to exercise its authority to terminate the employment of its employees such as the Respondents in the present case, it is exercising authority and power of a quasi-judicial character. 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. The nature or character of the proceedings which such a statutory authority or body must adopt in exercising its disciplinary power for the purpose of terminating the employment of its employees, has been recently considered by this Court in several cases: *Vide Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, and *Shri Bhagwan and Another Vs. Ram Chand and Another*, , and it has been held that in ascertaining the nature of such proceedings with a view to decide whether the principles of natural justice ought to be followed or not, the tests laid down by Lord Reid in *Ridge v. Baldwin* (1964) A.C. 40, are relevant. In view of these decisions, Mr. Sen has not disputed this position and we think rightly.

20. It will be observed that the learned Chief Justice has followed *Ridge v. Baldwin Supra*, which does not place statutory bodies upon any special footing, although in some cases which fall under the third classification, statutory bodies might be concerned. Neither of the cases mentioned by the learned Chief Justice relate to statutory bodies. In *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, the Supreme Court was dealing with a company incorporated under

the Indian Companies Act. It was held that a State Government, when it exercises appellate jurisdiction under Rule 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, is a Tribunal within the meaning of Article 136(1) of the Constitution and was discharging a judicial function, and needed a judicial approach. In *Shri Bhagwan and Another Vs. Ram Chand and Another*, the provisions of the U.P. (Temporary) Control of Rent and Eviction Act (U.P. Act III of 1947) was being considered. Under that Act, it was necessary, except in certain cases, to obtain the permission of the District Magistrate to file a suit for eviction of a tenant. Against the order of the District Magistrate a revision lay to the Commissioner and from the Commissioner's order, revision lay u/s 7E to the Government. The question was whether this ultimate revision before Government was a judicial or a purely administrative proceeding. The Chief Justice dealt with the scheme and some of the main provisions of the U.P. Rent Control Act, and held that the District Magistrate and the Commissioner acted judicially because they had to decide a question which affected the right of a tenant and it was essential to hear both the pros and cons of the matter. It was held that revision before Government must also partake of the nature of a quasi-judicial proceeding. The learned Chief Justice said as follows:

When a legislative enactment confers jurisdiction and power on any authority or body to deal with the rights of citizens, it often becomes necessary to enquire whether the said authority or body is required to act judicially or quasi-judicially in deciding questions entrusted to it by the statute. It sometimes also becomes necessary to consider whether such an authority or body is a Tribunal or not. It is well-known that even administrative bodies or authorities which are authorised to deal with matters within their jurisdiction in an administrative manner, are required to reach their decisions firmly and objectively; but in reaching their decisions, they would be justified in taking into account considerations of policy. Even so, administrative bodies may, in acting fairly and objectively, follow the principles of natural justice, but that does not make the administrative bodies Tribunals and does not impose on them an obligation to follow the principles of natural justice. On the other hand, authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizens may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers; but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a Tribunal, would depend upon the

nature of the power conferred on the authority or body, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body and other relevant circumstances.

21. It is unfortunate that the learned Chief Justice uses the words "rights of citizens", without stating as to what kind of a right is meant. The case in question deals with property right and undoubtedly it comes within the line of cases which follow *Cooper v. Wandsworth Supra*. But does it apply to all kinds of rights? In the present case the right of employment is concerned. Is it correct to say that every administrative body dealing with the question of the employment of its employees must be taken to be acting quasi-judicially? This would go against the test laid down in *Province of Bombay Vs. Kusaldas S. Advani and Others*, , where Das, J. (as he then was) held that if an authority has power to do any act which will prejudicially affect the subject, then, although strictly speaking there are not two parties, the contest being between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act, provided the authority is required by the statute to act judicially. In other words, where in the statute of incorporation of the statutory body, there is a duty to hear the parties affected and then to decide the matter, then it would be a quasi-judicial act. This is somewhat different from the wide proposition that has been laid down in the *Calcutta Dock Labour Board's* case *Supra* where it is said that in every case a statutory body has a duty to hear the party affected and to follow the rules of natural justice. In the case Clause 36(3) of the *Calcutta Dock Labour Scheme of 1951* and Clause 45(6) of the *Scheme of 1956* required that the employee must be given a hearing so that the matter came directly under the third class enumerated by Lord Reid in *Ridge v. Baldwin Supra*. But the learned Chief Justice says as follows:

...if...the Appellant wanted to take disciplinary action against them on the ground that they were guilty of misconduct, it was absolutely essential that the Appellant should have held a proper enquiry. At this enquiry, reasonable opportunity should have been given to the Respondents to show cause and, before reaching its conclusion, the Appellant was bound to lead evidence against the Respondents, give them a reasonable chance to test the said evidence, allow them liberty to lead evidence in defence, and then come to a decision of its own. Such an enquiry is prescribed by the requirements of natural justice and an obligation to hold such an enquiry is also imposed on the Appellant by Clause 36(3) of the *Scheme of 1951* and Clause 45(6) of the *Scheme of 1956*.

22. Mr. Ginwalla has argued that in the case of registered dock workers the question is one of status rather than employment, because no person can work in a dock who is not a registered dock worker. Cancellation of registration would, therefore, completely debar the person from working in the docks. That, however, does not appear to be the basis of the Supreme Court decision as appears from the report. There is certainly a lot to be said for the argument advanced by Mr. Ginwalla, and it is quite possible that the Supreme Court did not

intend to state the legal position in such a wide manner as is being advocated by Mr. Chatterjee. We are, however, powerless in this matter and must follow the law as declared by the Supreme Court. We must, therefore, hold that if it was a case of there being no rules at all, or in the case of Rule 18 of the Central C.S. (C.C.A.) Rules not being applicable, it was incumbent on the Appellants to follow the rules of natural justice which has not been done in this case.

23. The result is that, for the reasons given above, the conclusions reached by the Court below must be upheld and this appeal is dismissed, but there will be no order as to costs.

24. Operation of this order will remain stayed for six weeks as prayed for.

Arun K. Mukherjea, J.

25. I agree.