
(1963) 10 MAD CK 0040
In the Madras High Court

Dr. T.C.M. Pillai

APPELLANT

Vs

The Indian Institute of Technology

RESPONDENT

Date of Decision : 09-10-1963

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1965) ILR (Mad) 24 : (1964) 1 MLJ 70

Hon'ble Judges : K. Srinivasan, J

Bench : Division Bench

Judgement

K. Srinivasan, J.—The Institute of Technology Act, 1961 (LIX of 1961), came into force on the 1st April, 1962. This Act purported to declare certain institutes of technology to be institutions of national importance and provided for certain matters connected with such institutions. One of such institutions declared to be of national importance is the Indian Institute of Technology, Madras. The Indian Institute of Technology, Madras, was prior to this Act a society registered under the Societies Registration Act. From the commencement of this Act the Society came to be governed by the provisions of this Act. The Indian Institute of Technology, Madras, hereinafter referred to as the Institute, became by virtue of this Act a body corporate, having perpetual succession. It consisting of Chairman, a Director and other Members of the Board. Section 6 of the Act conferred powers upon the Institute generally to provide for instructions and research in engineering technology, to hold examinations and to grant degrees, to establish hostels, etc It was also empowered to frame statutes and ordinances for the proper government of the Institute. A Board of Governors was constituted consisting of a Chairman to be nominated by the President of India, who is the Visitor of the Institute, who has certain powers. The Board consists of certain persons among whom are persons nominated by the Governments of each of the States comprising the zone in which the institute is situate. Four persons are also to be nominated by the Council established u/s 31 of the Act. The Council consists of several persons including a Minister of the Central Government, the Chairman and Director of each of the Institutes and other persons nominated by

various authorities. Three members of the Parliament are also Members of the Council. The duty of the Council is to co-ordinate the activities of all the Institutes and generally to advise in matters pertaining to education, to lay down a policy regarding recruitment and conditions of service of employees and to prepare development plans for the institutes. By virtue of the powers conferred by Section 13, the Board of the Institute is authorised to make statutes and such statute was prepared by the Board of Governors of the Indian Institute of Technology, Madras.

2. Under the provisions of the Act, each Institute has to maintain funds consisting of all the moneys provided by the Central Government, of fees and other charges received by the Institute, or moneys received by way of grants, gifts, donations, etc. or from any other source. This fund is to be applied towards meeting the expenses of the Institute. The accounts of the Institute are to be audited by the Comptroller and Auditor-General of India. The audit report is required to be placed before each House of Parliament.

3. In 1959, the Institute (then a Society) invited applications for appointment of Assistant Professors. The petitioner, Dr. T.C.M. Pillai responded to this invitation and he was appointed as Assistant Professor of Metallurgy by the Institute by an order dated 8th January, 1962. Having regard to his qualifications, his starting salary was fixed at Rs. 920 rising up to Rs. 1150. The order stated that the post is a permanent one but that the appointment was made on probation for a period of one year and subject to satisfactory completion of the probation, the appointee would be confirmed in the post. It also specified that during the period of probation, the appointee's services may be terminated by one month's notice on either side. The petitioner states that he accepted this post at a considerable sacrifice to himself, in the hope that his experience in the field of metallurgy could be made available to the Indian students. He also states that in recognition of his outstanding researches in that field, he had been promised a research grant of over a lakh of rupees by the National Bureau of Standards, United States of America. According to the petitioner, his relationship with his departmental head and the Director of the Institute became unhappy, notwithstanding that his work was not found fault with. On 21st March, 1963, on the eve of the completion of the one year of probation, he was asked by the Assistant Registrar, to submit a report on the work done by the petitioner during the probation period. Such a report was submitted by the petitioner. On 29th April, 1963, however, he received a letter, dated 26th April, 1963, from the authorities of the Institute to the effect that the Board of Governors had decided to terminate his services and one months notice was accordingly given to him. The petitioner claims that this arbitrary decision to terminate his services for no valid reason whatsoever and without giving him reasonable opportunity to show cause offends against all principles of natural justice. He claims that he is entitled to the protection afforded by the Constitution against such arbitrary use of powers and victimisation.

4. The further parts of the affidavit of the petitioner set out in some detail certain incidents which took place which brought him into disfavour with the authorities. He claims that he asked for the allotment of B type quarters as the, C-I type which had been allotted to him was found inconvenient. Though several B type quarters were available for allotment and were in fact kept unoccupied the petitioner's request was turned down. This was in January, 1963. It is also claimed by the petitioner that when he sought to apply for a post in the Benares Hindu University in December, 1962, the respondent Institute refused to forward the application, though, to all intents and purposes the Institute had decided to terminate the services of the petitioner shortly. Some other disputes with regard to the matters of a non-academic nature are also instanced by the petitioner. He claims that a certain medical bill in respect of his wife's illness, towards which he was entitled to be reimbursed, was refused, and when he sought to appeal to the President of India as the Visitor under the Act, his appeal petition was also not forwarded. It is accordingly the contention of the petitioner that in view of the ill-will that came to exist between the Board of Governors and himself, his services have been terminated, and that this termination, which is in the nature of a punishment is opposed to all principles of natural justice, and violates the protection guaranteed by the Constitution of India.

5. In the counter-affidavit filed on behalf of the Institute, it is stated that the petitioner had been repeatedly applying for appointment ever since June, 1960. In 1962, the Institute offered him the post of Assistant Professor subject to the terms and conditions already indicated. It was also made clear that the appointee was to be on probation for a period of one year and on satisfactory completion of probation, he would be confirmed in the post. It was stated clearly in the order of appointment that the petitioner's services were liable to be terminated by a month's notice on either side. The petitioner accepted the offer of appointment under the terms and conditions stated, and joined duty on 23rd May, 1962. After he was appointed, however, the Institute came to know from a reference made by the Kerala Government that the petitioner was employed in the Kerala University and was under a bond to serve that University, a fact which was not disclosed to the Institute when he applied for appointment as an Assistant Professor. On 15th April, 1963, the Board of Governors met and one of the subjects for consideration was the completion of probation of five members of the staff including the petitioner. The Board resolved that " under the terms of offer of appointment made to and accepted by Dr. Pillai, the services of Dr. T.C.M. Pillai as Assistant Professor at the Institute be terminated with a month's notice effective from the date of its receipt by him." It was following Upon this resolution that the notice was given to the petitioner. The counter-affidavit traverses the several claims made by the petitioner with regard to his qualifications. It is unnecessary to set them out. It is claimed however that the petitioner did not become the victim of any displeasure either at the hands of the departmental head or the Director. The information sought from the petitioner on the eve of the completion of one year of probation was only to have a formal

report with regard to the progress of work done by the petitioner during the year. It is claimed that the termination of service was in the lawful and bona fide exercise of the power conferred on the Board of Governors Under the statutes of the Institute. It is maintained, that no victimisation was intended and that the termination was not as a punishment.

6. It is unnecessary to enter into the further contents of the affidavit which deal with the petitioner's allegations that there were certain disputes regarding medical bills or the allotment of residential quarters.

7. The Institute also contends that the petitioner is not a members of a civil service under the Union, who is entitled to the protection of Article 311 of the Constitution. It is urged that no question of violation of principles of natural justice at all arises in the circumstances of the case and that the Board of Governors was fully justified in discharging a disgruntled employee from its service.

8. Mr. G.K. Damodara Rao, learned Counsel for the petitioner, has endeavoured to establish that the petitioner must be regarded as a civil servant in the employ of the Union and that he is therefore entitled to the protection of Article 311. The further contention is that when it is made patent that the discharge of the petitioner was resorted to as a punishment, it was incumbent on the Institute to have framed charges against him and to have furnished him with an opportunity of submitting his explanation and to show cause against the proposed discharge. This latter contention necessarily hinges upon the first. Unless it can be established that the petitioner is entitled to the protection of Article 311, it cannot be seriously maintained that the petitioner is entitled to an opportunity such as stated above. If on the other hand, the petitioner is in the employ of a private organisation, although created by a statute, this procedural protection that he claims cannot possibly be extended to him. There is no doubt however that if he is regarded as a civil servant in the employ of a State Government or of the Union, his discharge from employ has been made under circumstances which would justify his claim that he has not been afforded a reasonable opportunity. The initial question that I have to consider is therefore whether the petitioner's claim that he is entitled to the constitutional protection is substantiated.

9. Mr. Damodara Rao has referred to certain provisions of the Act. He points out that practically the entirety of the funds for the running of the Institute are provided by the Central Government and that the creation of the Institute as an autonomous body cannot conceal the substantial nature of the Institute, as an organisation of the Government. He has adverted to the prospectus for 1962-63 issued by the Institute, where it is stated:

The Indian Institute of Technology, Madras, is the third in the chain of four higher technological institutes set up by the Government of India for the advancement of technological education in the country.

That the Institute was set up by the Government of India and that the control

exercised by the Government of India in major matters are indicative of the fact that the Institute is only a unit in the Governmental organisation, is the claim made by the learned Counsel. It is urged that the Act has declared this Institute to be one of national importance. The President of India is the Visitor who is competent u/s 9(2) of the Act to appoint persons, to review the work and progress of any Institute and to hold enquiries into the affairs thereof. It is also competent to the President to take such action and to issue such directions as he considers necessary and the Institute shall be bound to comply with such directions. He urges also that among the members of the Board of Governors are persons nominated by the Governments of the zonal States. The Auditor-General of India is entrusted with the auditing of the accounts of the Institute and the audit report had also to be furnished to the Central Government and has to be placed before each House of Parliament. Special reference has been made to Section 37 whereby the Central Government is authorised to issue such directions as may be necessary to remove any difficulty in giving effect to the provisions of the Act. It is also pointed out that under the statutes framed by the Board, a right of appeal to the Visitor is available to a member of the staff aggrieved by any order imposing a penalty passed against him by the Board. These features are relied upon by the learned Counsel in support of his stand that the employment on the staff of the Institute is both in fact and in law employment under Union.

10. The material relying upon which it is contended that the petitioner should be treated as a person who is a member of a civil service of the Union are these. In May, 1963, the Government of India in the Ministry of Finance issued a circular to the effect that some categories of staff of some Government institutions, particularly teaching staff of technological institutions, were permitted to undertake private consultative work and to receive fees from private bodies subject to certain conditions. This circular was issued to the Ministry of Scientific Research and Cultural Affairs which was requested to bring the circular to the notice of the Institutions under their administrative control. Mr. Damodara Rao points to the description of "Government institutions" appearing in this circular as indicating that the Institute is a Government institution. It also appears that when the petitioner applied for the renewal of his passport, the Assistant Passport Officer attached to the Ministry of External Affairs stated that since the petitioner is a Government official, the approval of the Government of India was necessary before the passport could be renewed. In yet another circular issued by the Ministry of Home Affairs to all Ministries of the Government of India, the rules to be observed in the matter of forwarding applications of Central Government employees for employment elsewhere were set out. There is no clear indication in this circular, but reference is made to applications for posts in a department under the Central Government, applications for the posts under the State Governments owned wholly or partly by the Central Government or State Government, or applications for posts in quasi-Government organisations. This circular however deals with applications of the kind made by the Government

servants for outside posts, and the extract above refers to such outside posts. It also appears that the Ministry of Scientific Research had been issuing directions to the Institutes indicating that the scientific and technical personnel working in the Institutes should be encouraged to publish papers. Reference is also made to the fact that when the petitioner applied for allotment of a motor car on a "priority basis, the Secretary of the Institute forwarded the application to the Ministry of Scientific Research and Cultural Affairs for such allotment from the Government quota. It is also pointed out by the learned Counsel that the advertisement calling for applications for appointment of Assistant Professors was issued by the Ministry of Scientific Research and Cultural Affairs.

11. It appears that medical attendance that is given to the members of the staff of the Institute is entrusted to Government medical officers. A copy of a certificate of fitness to resume duty (issued perhaps to the petitioner) has been produced in which the certificate specifies that:

the person is now fit to resume duties in Government service...

According to the petitioner, the Institute in all its transactions with its employees and in the matter of exercising control and discipline over them is guided by the Government of India. For instance, it is stated that when the petitioner applied for B type quarters, which his status entitled him to, the Registrar of the Institute pointed out that the Government of India's instructions were that every person should be allotted the next lower grade of quarters and that these rules prevented the compliance with the request of the petitioner.

12. It seems to me to be exceedingly difficult to accept the contention that on the basis of these facts, the petitioner's status as a person in the civil service of the Union can be said to be established. That the Passport Officer referred to him as a Government official or that the Institute sponsored his application for allotment of a car out of the Government quota are certainly not conclusive by any means. It is true that the Institute prefers to follow the rules with regard to several matters of administration which have already been formulated by the Government for its own administrative departments. That they, in preference to framing a set of rules of their own, were prepared to adopt rules that were ready-made does not give any indication that they did so because the Institute was itself a Government organisation. The question of the status of the petitioner, whether he is a member of a civil service of the Union, must depend upon more fundamental data than such instances as those given above.

13. Is there any indication in the Act itself which would lead to such a conclusion? The Act was passed in the exercise of the legislative powers of the Parliament under Entry 62 and Entry 64 of List I of the Seventh Schedule more principally the latter. It is common ground that before the passing of this Act, the Institute was a society registered under the Societies Registration Act and was being financed by the Government to a considerable extent. After the passing of the Act by which the Society became a body corporate, in so far as its finances

are concerned, the position was just the same. u/s 21 of the Act, the Central Government may pay to each Institute in each financial year such sums of money and in such manner as it may think fit after due appropriation made by the Parliament by law in this behalf, and u/s 22, the Institute maintains a fund of which such moneys provided by the Central Government form part. It is true that the audit of the accounts of the Institute is entrusted to the Auditor-General by a special provision and the audit report has to be placed before both Houses of Parliament. It is also true that the President of India is a Visitor under the Act and in certain matters he is the appellate authority. Are these facts, which establish considerable financial and administrative control over the working of the Institution, sufficient to establish that the staff employed by the Institute are in the civil service of the Union ? One important feature is that though funds are provided for the Institute from the Consolidated Fund of India and the utilisation of those funds is scrutinised by Parliament, the salary of the members of the establishment is not directly paid out of the Consolidated Fund of India ; nor do the receipts of the Institute by way of fees and other charges received by the Institute or from any other source, taken into the Consolidated Fund of India. If the members of the staff of the Institute form a civil service of the Union of India, one would naturally expect that their emoluments would come out of such consolidated fund. That is certainly not the case here. The fact that the Government provides certain grants to the Institute to enable it to discharge its functions efficiently under the Act does not justify the somewhat far-reaching conclusion that these funds are provided only for the payment of the salaries and emoluments of the employees. It is common knowledge that in the case of service under the State or the Union, it is the State or the Union that maintains a record of the services of such servants, their leave, provident fund and pension accounts. It is not the contention of the learned Counsel for the petitioner that in so far as the employees of the Institute are concerned, the Union is under any responsibility in respect of any of these matters. It may also be noticed that the Government Servants Conduct Rules, which either the State or the Union Government formulates in respect of its respective employees, do not apply to the petitioner and others like him. Such rules of conduct are framed under the authority of the statute promulgated by the Board. Clause 13 of the Statute which deals with the terms and conditions of the service of permanent employees, provides for disciplinary control of the employee for the reimbursement of medical expenses and for conduct rules. Such conduct rules have been framed in Schedule B to the Statute. It is no doubt on lines similar to rules which govern those in Government service ; but the point to notice is that the authority to regulate and control the conduct of the employees is the Institute itself and not the Union or the State Government.

14. These features must necessarily lead to the conclusion that while the Government of India, by reason of the fact that the Institute has been declared to be of national importance and derives its financial assistance to a considerable degree from the Union funds, exercises a considerable measure of control over

the working of the Institute, it is not the employer in relation to the members of the staff.

15. Learned Counsel for the petitioner has referred to *Barada Kanta Adhikary Vs. The State of West Bengal and Others*, . In that case, a Maistry Instructor of the Moorshidabad Institute of Technology, Berhampur, West Bengal, was discharged from service in the post in which he was appointed on a temporary basis. He moved the High Court under Article 226 complaining that his services were wrongly terminated. The learned Judge was called upon to consider whether the service in such an institution is at all a civil service or civil post under the State. Learned Counsel points to the fact that it was held in that decision that there is no decisive test for determining whether a person holds a civil post under the State or not, and that even where the State exercises control, such control may not be decisive of the questions. The learned Judge stated:

The Court's search for tests to define what is a civil post under the State has been so far exploratory without being decisive. It has been said that the real test for determining whether a person holds a civil post under the State is not whether he receives payment out of the State funds, but whether the post is subject to and is held under the control of the State and whether the actual functions performed by him are those of the State. It will be unnecessary to discuss the authorities and it will be enough to mention the names of some of these decisions which have held for instance that it is not a civil post under the State, within the meaning of Article 311, a post under a statutory corporation such as. Damodar Valley Corporation, the Commissioner for the Port of Calcutta, the State Co-operative Bank or the State Bank of India or an Improvement Trust...

16. Reliance has been placed by the learned Counsel upon the following observations:

A Professor in a Government college who only teaches and takes classes may not have an obvious governmental or administrative function, but teaching or education has to-day in many instances become a State or Governmental function. Instead of trying to form date tests of one kind or another to define what a civil post under the State is, I am of the view that it is desirable that the Court should be left free to decide on the facts of each "case whether a particular post is a civil post under the State or not. For a Civil post under the State within the meaning of Article 311 of the Constitution, it is no doubt always relevant and almost sometimes crucial to see the nature of the control which the State exercises in the particular case under consideration. But even where it exists, such control may not be decisive of the question. It will be dangerous in my view to adopt any doctrinaire attitude in this respect. It is all the more so in the present context where various institutions receive important kinds of gifts, aids, help and encouragement from the State in diverse ways.... A certain amount of flexible interpretation guided by the facts of each case is a necessity in the present context of the governmental administration...

Relying upon these observations, the learned Counsel suggests that in the present case it should follow that by reason of the nature of the control exercised by the Union it should be held that the petitioner is in the civil service of the Union. It is important however to notice that the control that is exercised by the Union is not over the petitioner or persons like him. It is the control over the working of the institution in its broader aspect as an Institute of National importance established for the purpose of promoting technological and scientific education. The control stops at a certain stage and does not proceed all along the line of the administration of the institution. Even this decision is sufficient authority for the position that in a case like the present, the petitioner cannot be regarded as a person in the civil service of the Union. Even apart from the question of control, which is only one of several indicia, there are several tests which can be applied to determine the status of the persons. I have already indicated that there is no contract of service between the Government and the petitioner, that the Government is not under an obligation to meet the claims with regard to salary, provident fund or pension of the petitioner, that it exercises no control over his conduct, etc. The cumulative effect of these circumstances must therefore result in the conclusion that the petitioner cannot be regarded as borne on any cadre of the civil service of the Union.

17. In another case decided by the same Judge of the *M. Verghese Vs. Union of India (UOI) and Others*, an employee of the Durgapur Steel Project, who was dismissed without assigning any cause, moved the Court by a petition under Article 226, alleging violation of Article 311 and the rules of natural justice. The learned Judge had to consider whether the employees of statutory companies or corporations are Government servants. The learned Judge went extensively into this question but reiterated the conclusion, which he had reached in the earlier case, and declined to lay down any rigid formula for the determination of the question. He observed finally:

In this case I would not rest my decision on the point that the petitioners were not Government servants or holding civil posts under the State. In an appropriate case in future it may be necessary to examine and thoroughly consider how far the doctrine of incorporation making the company a legal entity creates a veil that cannot be pierced and extends to prevent service under such a company from being a service under the State within the meaning of Article 311 of the Constitution, specially in such companies like the Hindustan Steel, Limited where it is admittedly a completely Government-owned company with all the funds of the capital and all the shares owned by the Government and where the Government is not merely a majority share-holder of 51 per cent, but also the hundred per cent, owner of the company.

18. The learned Advocate-General appearing for the Institute has pointed out that when the petitioner was appointed, it was by the Society that was the predecessor of the incorporated Institute. The Board which came into existence under the Act is composed not wholly of Government officials. It consists of a

Chairman to be nominated by the President of India, and besides four persons nominated each by one of the zonal States and includes several non-officials. Equally, the Council consists of several non-officials, members of Parliament and others. This is not a case where the Government has any financial interest in the Institute is in the Durgapur Steel Project. This is by no means an institution governed by the State and the Government's power of interference therewith is exceedingly limited. In such circumstances, is it reasonable to postulate, so argues the learned Advocate-General, that a member of the Staff can be treated as a servant of the Government. In a decision of this Court in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, the question whether an employee of the Life Insurance Corporation holds an office of profit within the meaning of Article 191(1)(a) came to be examined. The general question whether an employee of a corporation can be regarded as a person holding a post in the public service of the State or the Union was examined by Rajagopala Ayyangar, J., who observed thus:

If a public corporation created under a statute be held to be a Government department or at least a servant or agent of the Government, it would logically follow that persons employed by these corporations would be persons holding posts in a public service in connection with the affairs of the Union or of the State dependent upon whether the corporation was created by the Union or the State Legislature. If so, the common law rule that service under the Crown was held at pleasure embodied in Article 311 of the Constitution as well as the constitutional safeguards which the Article provides for Government servants would be attracted to determine the conditions of service under such bodies. This question has come up before the Courts on several occasions and has been uniformly answered against the applicability of Article 311 to such employees. These decisions dealt with two types of cases ; (1) those in relation to municipal employees or employees of local authorities as defined by the General Clauses Act, including in this category employees of State regional authorities such as Port Trusts ; (2) public corporations created for carrying on State undertakings. The decisions however drew no essential distinction as regards the principles applicable as between these two categories...

Referring to *Mangal Sain Vs. The State of Punjab and Another*, it was observed:

The learned Judges also referred to Article 321 under which Parliament or the Legislature of a State may provide for vesting in the Union Public Service Commission or the State Public Service Commission, as the case may be, additional functions in regard to services under any local authority or other body corporate constituted by law or of any public institution. This was treated as a clear indication that a civil servant of the State or of the Union in Article 311, etc., was not the same as those in the service of a local authority or body corporate constituted by law or any public institutions....

The above observations are of a considerable importance in the present context. In *R. Srinivasan Vs. The President, District Board*, it was held that an employee

in the service of a District Board, which is undoubtedly a statutory authority, is not a member of a civil service of the Union or a civil service of the State, and that Article 311 could not apply.

19. If, therefore, the conclusion is that the petitioner in the present case is not a person in the civil service of the Union it necessarily follows that he is not entitled to the protection of Article 311.

20. It is worthwhile pointing out that the right of termination of the service of an employee on probation, which is found in statute 13(5) is identical with a like provision that was found in the bye-laws when the Institute was a Society. This clause is in these terms:

The appointing authority shall have the power to terminate the service of any member of the staff without notice and without any cause assigned during the period of probation.

Undoubtedly, so long as the period of probation has not been completed and declared to have been completed satisfactorily, the employee enjoys a status no higher than that of a temporary employee. It should therefore follow that it is open to the employer and equally to the employee to put an end to the service relationship by notice. Statute 13(2) provides that:

all appointments to posts in the Institute shall ordinarily be made on probation for a period of one year, after which period the appointee, if confirmed, shall continue to hold his office...

Clause (3) provides for the extension of the period of probation of any employee and also states that the official, if not confirmed, and his probation is also not formally extended, shall be deemed to have continued on a temporary basis, his services being terminable on a month's notice. From these provisions it is clear that during the period of probation an employee enjoys no more than a temporary status. Even so, learned Counsel for the petitioner argues that where the discharge is as a measure of punishment, he is entitled to the protection under Article 311(2). I have said enough to indicate that Article 311(2) will not apply to the employees of the Institute : Whether they are permanent or temporary makes no difference. I shall however consider whether even assuming that the petitioner is a Government servant, his discharge from service in the circumstances of the case invites any interference by this Court. In this connection a decision referred to by the learned Counsel is *The State of Uttar Pradesh Vs. Om Prakash Garg*, where it was held that the termination of service on one month's notice of a temporary Government servant will attract Article 311 if such termination has a tinge of penal action. The same view has been taken in the *The State of Bihar Vs. Gopi Kishore Prasad*, and also in *Madan Gopal v. State of Punjab* (1963) 2 S.C.J. 185.

21. It is the contention of the petitioner that his services were terminated for a particular reason and that reason has, according to him, a colour a penal action

taken against him. I have already referred earlier in this judgment to the allegation that the petitioner was under a contract of employment with the Kerala University and that in breach of that contract and without disclosing that fact to the Institute he applied for and obtained the post of Assistant Professor. This fact seems to have come to the notice of the Institute some time after the petitioner was appointed. The petitioner's complaint is that he has been penalised by discharge for this reason, as well as the several grounds of dispute between himself and the Director with regard to the allotment of quarters and the like. In reply to the allegation that he had been singled out for discriminatory treatment for these reasons, the Institute in its counter-affidavit pointed out that the question of confirmation of the petitioner was not singled out but that in the ordinary course the question of confirmation of five members of the staff came up for consideration by the Board. It is true that in the course of the proceedings of the Board of Governors, some reference was made to the fact that the petitioner had failed to disclose his connection with the Kerala University. It is urged by the learned Advocate-General that at the time when the appointing authority has to consider the confirmation of probation or the termination of the service of any employee, it is entitled to take into consideration all facts and that merely because the authority is dissatisfied with the employee, which in the last resort will be the only reason for the termination of service, it does not follow that the action is penal in nature. It is in the exercise of an undeniable right which the employer has. I am inclined to agree with the learned Advocate-General that the circumstances in the case do not warrant the view that the petitioner was discharged as a punishment.

22. In any event, since in my opinion the petitioner is not a Government servant, he is not entitled to the protection of Article 311. The petition fails and is dismissed. In the circumstances of the case, I make no order as to costs.