

(1973) 03 DEL CK 0001

In the Delhi High Court

Case No : Letter Patent Appeal No. 13 of 1971

Indian Institute of Technology

APPELLANT

Vs

Mangat Singh

RESPONDENT

Date of Decision : 29-03-1973

Acts Referred:

Citation : (1973) 9 DLT 475 : (1973) 2 ILR Delhi 6 : (1974) 2 LLJ 191

Hon'ble Judges : V.S. Deshpande, J; S.N. Shankar, J; Narain Andley, J

Bench : Full Bench

Advocate : B. Dayal and L.K. Gaur, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The common question of law involved in this letters patent appeal and the connected writ petitions (Civil Writs 497 of 1971 and 686 of 1969) is whether the termination of the service of an employee of a statutory corporation contrary to the provisions of the subordinate legislation made by the said corporation relating to the conditions of service of such an employee is a nullity remediable by the relief of reinstatement.

(2) Employment is originally and still basically a contract between the employer and the employee. This bilateral relationship is, however, often found to be superseded partly or wholly by status which is contrasted with contract. Status is determined extrinsically by law and not by agreement between parties. Status may supersede contract by affecting either of the two parties to it, namely, the master or the servant.

(3) The ideal contractual relationship is when both the master and servant are individuals. Even if a master is a partnership firm or a company, it is still a private legal person like an individual. On the other hand, if the master is the State, that is, the President or the Governor under the Constitution, the position changes completely. As pointed out in *Roshan Lal Tandon Vs. Union of India (UOI)*, "the origin of Government service is contractual. But once appointed

to his post or office, the Government servant acquires a status". If the master is a "local authority" within the meaning of section 3(31) of the General Clauses Act (or a "public authority" dealt with in 30, Halsbury's Laws of England, pages 682 onwards) the question whether the employment under the local authority is contractual or statutory would depend on the provisions of the statute Constituting the local authority or the statute or the statutory rules under which the statutory authority is acting. What if the master is a statutory corporation ? Statutory corporations may be of two kinds, namely, public or private. Employees of a public statutory corporation may be governed either by contract or by statutory provisions contained in the Parliamentary legislation or subordinate legislation made there under. A private statutory corporation would be more analogous to a company in its commercial and non-public character.

(4) From the side of the servant, status may supersede a contract when a servant holds an office or a public post as distinguished from a private employment. The earmark of a public function is that the public are interested in its discharge because it concerns the public. Even a public functionary may have a right to hold a post if he is permanent or may not have such a right if he is temporary. In the latter case his tenure would be contractual being unprotected by any statutory provision. Permanency is virtually unknown to a service contract. For, a breach of service contract can lead only to damages but not to specific performance in view of section 20(1)(b) of the Specific Relief Act, 1877 and section 14(1)(b) of the Specific Relief Act, 1963. Many employees either of private persons or of corporations, local authorities and some times even of the State may derive status from an entirely different source, namely, the Industrial Disputes Act, 1947, if they are serving in an industry.

(5) Status in a particular case may result either from an Act of Legislature or subordinate legislation made there under. When the contractual origin of employment is considered with the statutory status which may attach to it in a particular case, it would be a question in each case as to whether the employment is dominantly contractual or dominantly statutory. The test to determine whether it is a contract or a status is to be found in section 14(1)(b) of the Specific Relief Act, 1963. Insofar as the performance of a contract depends on the "violation of the parties" it is incapable of specific performance. It remains dominantly a contract. Statutory provisions relating to it may be either directory or unenforceable. On the other hand, if the statutory provisions governing the employment are mandatory and enforceable, then status supersedes the contract and the volition of the parties. The process of statutory control of contract takes place in other fields of law also. For instance in *Salar Jung Sugar Mills Ltd. etc. Vs. State of Mysore and Others*, the question for consideration was whether the sugar was sold under a contract of sale on which sales-tax could be imposed or whether the property in sugar passed merely by statutory action without a sale. After a survey of the case-law, it was held that the contract of sale was not superseded entirely by the statute inasmuch as the essence of the contract, namely, the mutual assent of the parties was still necessary for the

transfer of property in sugar even though other elements of contract may have been more or less controlled by statute. On the same reasoning. We may take the view that the employment in a particular case would remain contractual if the volition of the parties is left unfettered. But it would be governed by status if the volition has been taken away by statutory provisions.

(6) We are concerned here with two statutory corporations as employers, namely : (1) The Indian Institute of Technology, Delhi, and (2) The Oil and Natural Gas Commission. Indian Institute of Technology : Respondent Mangat Singh in this appeal was a temporary employee of the College of Engineering and Technology, Delhi, a society registered under the Societies Registration Act. The College became the Indian Institute of Technology, Delhi, under the Institutes of Technology Act, 1951, as amended by Act 29 of 1953 (hereinafter called the Act). The Institute is incorporated by section. 4 of the Act. The effect of the incorporation on. the terms and conditions of service of Mangat Singh was, according to section 5 of the Act, that the terms of service continued to be the same until ""duly altered by the Statutes". Section 26(g) authorised making of Statutes regarding terms and conditions of service of teachers and other staff of the Institute. u/s 27, the first Statutes were made by the Council which was a very high level body consisting of eminent scientists and educationists. from all over India presided over by the Central Minister for Technical Education. They were made with the previous approval of the Visitor who was no less than the President of India. A copy of the same has to be laid before each House of Parliament. Statutes may be amended by the Board of Governors of the Institute which is. also a high level body with the previous approval of the Visitor. The Central Government has no power to make rules or to frame the Statutes or to repeal or amend the Statutes. The Institute exercises powers of spending from the Fund of the Institute, of appointment of teachers and other staff as also disciplinary powers over them. Ordinances under the Act are made by the Senate of the Institute. The Institute has thus power to make two kinds of subordinate legislation. It is an entirely public body with no private character. It is a creature of the statute. It has no powers except those conferred on it and its components and officers by the Act and the Statutes and Ordinances made under it.

(7) By section 25 of the Act, all appointments of the staff, except that of the Director, have to be made in accordance with procedure laid down in the Statutes. u/s 16 of the General Clauses Act, a power to appoint includes the power to suspend or dismiss including the power to terminate the service of an employee by a simple discharge. The power to terminate service exercisable under the Statutes thus derives directly from section. 25 of the Act itself. Statute 13 lays down the terms and conditions of permanent employees. Statute 14 refers to the terms of service of temporary employees. According to Statute 13(2) an employee "if confirmed, shall continue to hold his office subject to the provisions of the Act and the Statutes till the close of the academic session in which he attains the age of sixty years." The expression "to hold his office" in Statute 13(2) is significant. For, according to Lord Reid in *Ridge v. Baldwin*

(1964) A.C. 40, the holder of a public office is not a servant of the public authority under which he serves or of anyone else at all. A permanent employee of the Institute is thus governed entirely by status both because he holds a statutory office and also because he is employed under a public statutory authority. Under Statute 13(2), Therefore, a permanent employee of the Institute has a right to hold his office till the date of superannuation. Every right has a corresponding obligation or liability. The right of the employee thus corresponds to the obligation on the institute not to terminate the services of a permanent employee before the age of superannuation except, of course, by way of punishment. According to Statute 13(9) no punishment can be imposed on an employee except after following the natural justice procedure.

(8) The obligation to respect the permanency of an employee and also the obligation to follow the natural justice procedure before imposing a punishment on an employee are thus mandatory statutory obligations imposed on the Institute. A breach of such obligation would enable the aggrieved employee to file a writ petition against the Institute under Article 226 of the Constitution. The Supreme Court has consistently taken the view that the breach of a Statute or an Ordinance framed under the Act Constituting a University or an educational institution like the Institute would make the action of the University or the Institution ultra virus and a declaration of such invalidity would reinstate the employee whose service was terminated by such ultra virus action.

(9) On similar facts, employment was held to be a statutory status in the following cases :- In Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others, . the Supreme Court observed that-

" THE power of the University to terminate the services of the incumbents was derived from (a) agreements, (b) Ordinances, and (c) Statute No. 30 (the last one being made by a Presidential Order)..... These powers, unless used according to the stated conditions, were unexercisable..... the University was required to take action in accordance with the Ordinance and the Rules."

(10) In Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, the Ordinance framed under the University of Saugar Act, 1946 was held to be law, a breach of which made the termination of service of a college teacher ultra vires. The Supreme Court, Therefore, remanded the case for an inquiry whether the rules of natural justice had been violated in terminating the service of the appellant. In Dr. T.C. Pillai Vs. The Indian Institute of Technology, Guindy, Madras, , the Supreme Court construed the very Statute 13 of the Indian Institute of Technology which governs the conditions of service of a permanent employee of the Institute. Grover, J., speaking for the Court observed as follows in paragraph 5 at page 1813 of the report :-

"If the services of a probationer were, Therefore, terminated by way of punishment without following the procedure prescribed by clause 9 of Statute 13, it would be competent for the High Court to issue an appropriate writ."

(11) This observation finally establishes that the contravention of a mandatory provision of Statute 13 would make the termination of service a nullity.

(12) On the other hand, employment was held to be contractual on different facts in other cases such as the following :-

"IN S.B. Dutt Vs. University of Delhi, (7), section 45(1) of the Delhi University Act, 1922, required the appointment of a teacher of the University to be under a written contract. A dispute arising there from was referred to arbitration u/s 45(2). The award of the arbitrator directing reinstatement was set aside as disclosing an error of law on the face of it inasmuch as the contract of service could not be specifically enforced. In Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, , the conditions of service of the college teacher, though governed by Statutes of the University, had to be incorporated into a contract. They were, Therefore, held to be contractual, a breach of which could lead only to a claim for damages but not one for reinstatement. In Dr Mohd. Khan Durany V. The Principal, Shivji College (1970) 2 Delhi 414, (9) a Full Bench of this Court denied reinstatement to the petitioner firstly because his service was rightly terminated by a notice as he was only a probationer and secondly because the terms of his employment had to be according to the prescribed form of the service contract set out in Ordinance Xii which made them dominantly contractual and not statutory. A teacher appointed by a University constituted under a statute was held to be not holding an office of Status in Vidyodaya University V. Silva (1964) 3 All Er 865, by the Privy Council. On the facts of that case, terms of his service were contractual and not statutory as observed by the Supreme Court in relation to that decision in Vidya Ram Misra's case. In Banchhanidhi Rath Vs. The State of Orissa and Others, also the terms of employment of a teacher were held to be contractual and not statutory."

In the light of the above, the legal position appears to be as follows :-

"INL.P.A. 13 of 1971 if respondent Mangat Singh was a confirmed employee (Which is a mixed question of fact and law to be decided by the Letters Patent Bench) then Statute 13(2) imposed a mandatory statutory obligation on the Institute not to terminate his service till he attained the age of superannuation. Volition of the parties was completely excluded thereby. The purported termination would be ultra virus Statute 13(2) read with section 25 of the Act. In Civil Writ 497 of 1970 Miss Ratna was a temporary employee of the Institute. She was not confirmed even after the period of her probation had expired. According to Statute 13(3), Therefore, she "shall be deemed to have continued on a temporary basis and that her service may then be terminable on a month's notice,". She had, Therefore, no right to her post. A simple termination of her service was in accordance with the contract of her service involving no breach of any mandatory statutory obligation. If, however, she is able to show that the termination of her service was with a view to impose a punishment on her, a question to be decided by the learned Single Judge hearing her writ petition then and then only, the mandatory statutory obligation contained in Statute 13(9)

would be contravened on the analogy of the principle underlying in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., Her writ petition has been filed more than three years after the termination of her service. Some time was spent by her in filing appeals and in recourse to arbitration proceedings. It would be for the learned Single Judge to consider the effect of the delay also."

(13) Oil and Natural Gas Commission Section 3 of the Oil and Natural Gas Commission Act, 1959 establishes and incorporates the Commission consisting of members. The conditions of service of the members are governed by the Rules made by the Central Government u/s 31. u/s 12, the Commission is empowered to appoint such number of employees as it may consider necessary. The functions and the terms and conditions of service of such employees shall be such as may be provided by regulations made u/s 32 of the Act. Such regulations are not placed before Parliament. They have to be made with the previous approval of the Central Government and they must not be inconsistent with the Act and the Rules made there under. u/s 32(3) the Central Government may amend, vary or rescind any such regulation. The Commission is a statutory corporation. It is a public corporation and not a private corporation. Its main function u/s 14 is to plan, promote, organise and implement programmes for the development of petroleum resources and the production and sale of petroleum and petroleum products and all the incidental matters. u/s 15 it has power to spend for carrying out its functions and for implementing schemes. All property acquired with the funds of the Commission shall be vested in the Commission u/s 17. u/s 18 the Commission has rights and obligations of the Central Government in certain cases. The Commission frames its own budget u/s 21. Its accounts are audited by the Comptroller and Auditor General of India. Acquisition of land for the Commission is to be deemed for a public purpose u/s 24. u/s 27, the members and employees of the Commission acting under the rules and regulations made under the Act are to be public servants u/s 21 of the Indian Penal Code. u/s 29, the Commission shall be deemed to be a company within the meaning of any enactment for the time being in force providing for the levy of any tax or fee by the Central Government or a State Government and shall be liable to pay such tax or fee accordingly.

(14) The Commission has framed Regulations u/s 32. Regulation 25 authorises the imposition of penalties on the employees of the Commission. Regulation 27 lays down the procedure (of notice, charges, defense and hearing, etc.) governing the disciplinary inquiry which may result in such a punishment. Regulation 33 provides for an appeal against the imposition of the penalty. Regulation 40 specifies the powers of the appellate authority. Petitioner Kali Ram in civil writ 686 of 1969 complains that the disciplinary inquiry against him was held by an officer who was biased against him and his order was based on no evidence. He also complains that the appellate authority did not give reasons for its order enhancing the punishment which had been imposed on him and removing him from service. Two questions, Therefore, arise, namely:-

(1) Whether the above-mentioned allegations amount to allegations of contravention of Regulations 27 and 40, and (2) if so, whether these regulations imposed 3 mandatory statutory obligation on the Commission.

(15) The first question raises a basic issue. What is the legal basis of the rule of natural justice that a person is unfit to try or inquire into the conduct of any other person against whom he is personally biased ? Why is it that an order based on no evidence is void? Why is a quasi judicial authority required to give reasons for its orders? In short, why are the rules of natural justice not merely moral precepts but are enforceable rules of law? We see the answer to be in the following reasons. Like the other rule of audi alteram partem, these requirements of natural justice are based firstly on the sense of fairness and justice which guides courts in giving decision and is thus recognised to be itself a source of Law. (W.M.Dias-Jurisprudence, Second Edition, page 167). Secondly, according to pollock (Jurisprudence and Legal Essays, 1961, page 124), the meaning of the phrase "natural Justice" Is "the ultimate principle of fitness with regard to the nature of man as a rational and social being" which could be traced to Aristotle and the Roman jurists. As pointed out by Lord Evershed, Therefore, in Ridge v. Baldwin (1964) AC. 40, at 86, the principles of natural justice are required in order to conform to this ultimate Principle. Lastly, whenever .an order involving civil consequences against an individual is to be issued by an administrative or a quasi-judicial authority, judges have construed statutory provisions empowering such action to imply that rules of natural justice would be followed by the authorities before visiting the individual with any harmful consequences. In Cooper v. Wandsworth Board of Works (1863) 14 C. B. (N. S.) 180, (13) it was argued for the Board that the Board was not obliged to do more than observe the statutory conditions precedent to the exercise of the power to pull down and demolish a house. The implication was that the statute being silent as to the observance of the rules of natural justice, the Board was not bound to observe it. The reply to this argument was given by Byles, J., in one sentence : "The justice of the common law will supply the omission of the legislature". In Ridge v. Baldwin (1964) A.C.40, (3) Lord Reid referred to the decisions in which the principle of natural justice was applied "on a construction of the regulations". In the same decision. Lord Morris at page 123 referred to the following observation of Lord Selborne, L. C" in Spackman v. Plumstead Board of Works L. R. 10 A. C. 229 (15) at 240(14) -

" NO doubt ,in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated".

Similarly, Lord Devlin at page 141 observed as follows :-

" WHETHER or not they (principles of natural justice) are to be applied to any statutory procedure depends upon an implication to be drawn from the statute itself".

(16) In *Malloch v. Aberdeen Corporation* (1971) 2 All Er 1278 (15) also, Lord Reid observed at pages 1282-83 as follows :-

" THE right of a man to be heard in his own defense is the most elementary protection of all and, where a statutory form of protection would be less effective if it did not carry with it a right to be heard, I would not find it difficult to imply this right"

Professor S. A. de Smith in his "Judicial Review of Administrative Action", 2nd Edition, page 234, observes as follows :-

" THAT Parliament is competent to make a man judge in his own cause has long been indisputable; but the courts continue to uphold the common law tradition by declining to adopt such a construction of a statute if its wording is open to another construction."

(17) In *Bharat Raja Vs. The Union of India (UOI) and Others*, it has been explained why a quasi-judicial order must give reasons. To sum up, these requirements are implied by Courts in construing the relevant statutes as if the statutes themselves require this to be done. It follows, Therefore, that an allegation that any of these rules of natural justice has been contravened amounts to an allegation that the statutory provisions under which such action contrary to natural justice has been taken have themselves been contravened.

(18) Two principles of law are well-established. On the one hand, as stated above, a contract of employment depending on the volition of parties cannot be specifically enforced. On the other hand, subordinate legislation, if validly made, has "the full force and effect of a statute" (36, Halsbury's Laws of England, 3rd Edition, paragraphs 723 and 732). To the same effect is the observation of Subba Rao, J., in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, , (17) that "rules made under a statute must be treated as exactly as if they were in the Act and are of the same effect as if contained in the Act". Subordinate legislation may be of various kinds such as rules, regulations, schemes, directions and bye-laws. With regard to the nature of subordinate legislation made by statutory corporations, one relevant classification may be made. On the one hand are the regulations etc., made by statutory public corporations which are of general application. On the other hand are bye-laws etc., usually made by private corporations which are applicable only among their members. C. K. Allen in his "Law in the making". Seventh Edition, pages 542 -543, calls the latter "autonomic" inasmuch as they concern directly only the members of a particular corporation, the most familiar example being the Articles of Association of a company. They are not laws proper as observed by the Supreme Court in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, , in relation to the bye-laws of a co-operative society. A similar distinction was made in *Kruse v. Johnson* (1898) 2 Q. B. 91 (19) and was referred to in *Indian Airlines Corporation Vs. Sukhdeo Rai*, . But it can not be suggested that the regulations made by the Commission u/s 32 of the Act are of

the nature of internal bye-laws of a co-operative society or a private corporation.

(19) These regulations, therefore, must fall in the former class, namely, subordinate legislation of general application. If so, these regulations are binding both on the Commission as also on the employees of the Commission and everyone else concerned. For, the power to make regulations u/s 32 is generally exercised by the Commission for discharging its functions under the Act. It is not confined to laying down the terms and conditions of service of their employees. The regulations cannot, Therefore, be said to be "automatic" laws but have to be regarded as a part of the general law of the land.

(20) A further distinction may be drawn between the rules made u/s 31 and the regulations made u/s 32. The latter cannot be inconsistent with the former. To that extent their status is inferior. But the subjects on which rules and regulations can be framed are totally different. The possibility of repugnancy between the two is, Therefore, remote. The subordination of the regulations to the rules is, Therefore, mainly theoretical. Otherwise, the mere name "regulations" does not inherently indicate any inferiority to the name "rules". Section 3(51) of the General Clauses Act indicates that they have otherwise the same meaning. For, "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment". Further in *Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others*, the State Transport Corporation established under the Bombay State Road Transport Act, 1950 was held to be a "company" within the meaning of the Land Acquisition Act. This was because of the peculiar definition of a "company" in that Act meaning even a statutory corporation incorporated by "an Indian law". It was also held that such a corporation was not a "local authority" within the meaning of section 3(31) of the General Clauses Act. But none of these reasons substantially diminish the statutory force of the regulations made u/s 32 by the Commission. Therefore, no distinction can be made between rules and regulations as to their general efficacy as law.

(21) The problem before us is this, - Is the contravention of natural justice procedure which is equivalent to a contravention of regulations 27 and 40 a breach of a statutory obligation, by the Commission, or is it merely a breach of the contract of employment with Kali Ram? The answer is not in doubt. If the regulations are binding on the Commission, as on Kali Ram, then they supersede the contract of employment at any rate to that extent. The word "statutory" has always been used to include not only Parliamentary legislation but also subordinate legislation such as rules and regulations. The procedure of disciplinary action, basing the order on evidence and the giving of reasons for orders are not matters governed by the contract of employment. In fact, they are not relevant in a contractual relationship at all. If these regulations are, therefore, to have any effect, they must be regarded as law. Otherwise they would be merely pious homilies. The contravention of the regulations is,

Therefore, a contravention of a statutory obligation and not of a contract.

(22) Nor is there any conflict between section 14(1)(b) of the Specific Relief Act, 1963 and the regulations framed u/s 32 of the Oil and Natural Gas Commission Act, 1959. The rule of construction of statutes in such case was laid down by the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, . The two statutory provisions work in their respective fields. The former applies only to a contract. The latter is a statutory regulation. It applies by its own force. Its application supersedes any pre-existing contract.

(23) The statutory status as an employee is a privilege which is ordinarily enjoyed only by holders of public offices serving- under the Government. When however Governmental activities are increasingly entrusted to statutory corporations, the question arises whether this privilege of a civil servant should extend to the employees of these statutory corporations particularly when they are performing the same functions as would have been performed by the Government otherwise. On the one hand, such a security of tenure is given only to a public servant who is discharging a public duty. He is in public employment and does not serve any personal master. On the other hand, the efficiency of the employees of a commercial corporation would be impaired if they are given a security of tenure which is unknown in a purely master and servant relationship. It is not surprising, Therefore, that two divergent views have been judicially expressed according as one or the other of the above two considerations prevailed.

(24) In the following cases, employment under a statutory corporation (though governed by Regulations) was either viewed or held to be contractual :-

1. The holding in *Ram Babu Rathaur Vs. Divisional Manager, Life Insurance Corporation of India and Others*, was approved by the Supreme Court in *S.R. Tewari Vs. District Board Agra and Another*, , the reason given by the Supreme Court being that "the Corporation is an autonomous body and is not a department of the State and the relation between the Corporation and its employees is governed by contract and no statutory obligation is imposed upon the Corporation in that behalf " though the Court was not concerned with the obligatory nature of the Regulations. The decision in *Ram Babu Rathaur's* case was also referred to with apparent approval by the Supreme Court in *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, though the Court was dealing only with an employee of a company registered under the Companies Act and not with an employee of a statutory corporation. 2. Even a confirmed employee of the U.P. State Warehousing Corporation established u/s 28 of the Agricultural Produce (Development and Warehousing) Corporation Act, 1956, was held to be governed by his contract of service and his dismissal contrary to regulations 16 (3) framed by the Corporation u/s 54 of the said Act was held not to be a breach of a mandatory statutory obligation in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, . It may be most respectfully pointed out, however, that after the expression of the obiter dicta by a three

judges" Bench in S. R. Tewari's case , two five judges" Benches unanimously held to the contrary in P. R. Jodh v. A. L. Pande, already referred to above and in Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, . In Barot's case, clause 4 (b) of Schedule A of the Regulations made by the said corporation provided that a person against whom disciplinary action was to be taken, had to be given a hearing. The services of the appellant had been terminated without his being given such a hearing. The order of termination was, Therefore, held to be bad and was quashed by the Supreme Court. These two two decision"s were apparently not brought to the notice of the two judge"s Bench who decided Chandra Kiran Tyagi's case. It may be, Therefore, that the Court later could have regarded the decision in Chandra Kiran Tyagi"s case as being per incuriam. This may perhaps be the reason, why a later five judges" Bench in. Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , seems to have followed the previous decision in Barot"s case in preference to the decision in Tyagi"s case. Further, the corporation in Tyagi"s case was primarily a commercial one. Its nature is thus distinguishable from the nature of the Oil and Natural Gas Commission which is not primarily commercial but is, on the other hand, quasi-governmental. 3. Indian Airlines is another commercial corporation. The dismissal of its employee contrary to regulations framed by the corporation u/s 45 of the Air Corporations Act, 1953 was also, Therefore, not held to be in breach of a mandatory statutory obligation by the Supreme Court in Indian Airlines Corporation Vs. Sukhdeo Rai, by a three judge"s Bench. Their Lordships recognised that the decision in Barot"s case took a contrary view but pointed out that "the question whether the said regulations constituted a statutory obligation, subject to which only the power to terminate the employment could be exercised or not, or the question whether they took the employment out of master and servant relationship was not canvassed" in Barot"s case. This then latest law declared by the Supreme Court in Tyagi and Indian Airlines was followed in preference to Barot by a Full Bench of the Bombay High Court in Madhav Sakharam v. Sangamner Municipality 1973 1 S.L.R. 33 (29) holding that a breach of a mere rule or regulation would not involve the same consequences as a breach of Article 311(2) of the Constitution. If, Therefore, a municipal servant is dismissed in breach of such a rule, his dismissal is wrongful but would not lead to reinstatement."

(25) But the opposing view(contained in the direct decision in. Barot) seems to have now prevailed with the Supreme Court in the since latest decision of the five judge"s Bench in Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , In that case, section 46(e) of the Bombay District Municipal Act, 1901 empowered the municipality to frame Rules to determine the mode and conditions of appointing, punishing or dismissing any of its employees. The respondent was dismissed contrary to such a rule made by the municipality. The Court held that rule 143 had imposed a mandatory statutory obligation on the municipality. The dismissal of the respondent was, Therefore, ultra vires. We have, Therefore, to consider the effect of this decision on the decisions in Tyagi

and Indian Airlines. A distinction may be made between purely commercial statutory corporations and other statutory corporations which are quasi-governmental. Tyagi and Indian Airlines will govern the former while Barot and our present case will apply to the latter. There may be thus no inconsistency between these two views. But if the two views are to be held as being incompatible, then Barot supported by the latest decision in Sirsi Municipality case would prevail. We respectfully read the following as the significant features of the latest decision in Sirsi Municipality :- (1) While, the classification of different kinds of tenure of service made in S. R. Tewari's case and followed in other cases since then was- (i) Government servants, (ii) workmen governed by the Industrial Disputes Act, and (iii) employees of a statutory body dismissed in breach of a mandatory obligation imposed on it by a statute, in paragraph 17 of the judgment, the Supreme Court assimilated the category of Government servants with the category of employees of other public or local authorities into one category of "servants in the employment of the State or other public or local authorities or bodies created under statute". The whole of this category was termed "public employment" as distinguished from "private employment in pure cases of master and servant" in paragraph 19. This largely accords with the views expressed by Lord Reid and Lord Wilberforce in *Malloch v. Aberdeen Corporation* (1971) 2 All E R 1278, (15). Lord Reid observed at page 1282 as follows:-

" AN elected public body is in a very different position from a private employer. Many of its servants in the lower grades are in the same position as servants of a private employer ; But many in higher grades or offices are given special statutory status or protection".

(26) No such distinction between higher and lower servants has, however, been made by the Regulations made by statutory corporations in India. The only distinction is that (1) Rules made by Government govern the members who constitute such corporations but are not employees, and (2) Regulations made by corporations govern the employees. Lord Wilberforce observed at page 1294 as follows :-

"If there are relationships in which all requirements of the observance of rules of natural justice are excluded (and I do not wish to assume that this is inevitably so), these must be confined to what have been called "pure master and servant cases", which I take to mean cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection . If any of these elements exist, "then, in my opinion, whatever the terminology used, and even though in some inter partes aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void".

(2) In paragraph 24 of the judgment it was observed as follows :-

" THIS Court in S. R. Tewari v. District Board Agra (24).- Life Insurance Corporation of India v. Sunil Kumar Mukerjee; (31) Calcutta Dock Labour Board v. Jaffar Imam (30) and Narain das Barot v. Divisional Controller, S. T. C., (27) dealt with power of statutory authorities and bodies to dismiss servants. These decisions establish that the dismissal of a servant by statutory including local authorities or bodies in breach of the provision 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".

(27) In Indian Airlines Corporation case the Court recognised that Mafatlal Naraindas Barot's case supported the respondent but distinguished it on the sole ground that the question whether the regulation made by the corporation constituted a statutory obligation was not canvassed therein. The decision in Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, , was also distinguished as the power to issue the orders was given to the Government by section 11(2) of the Act itself as distinguished from the regulations made by the corporation u/s 49. The decision in S. R. Tewari's case was construed as being in favor of the view adopted in Indian Airlines Corporation case. In both U.P. Warehousing Corporation case and the Indian Airlines Corporation case a distinction was made between, corporations on the one hand and the Government on the other hand. Paragraph 24 of the decision in Sirsi Municipality case reproduced above seems to be, with respect, contrary to all these distinctions for the following reasons :-

"(A) this decisions in S. R. Tewari, Calcutta Dock Labour Board Vs. Jaffar Imam and Others, and Barot were grouped together and no distinction was made among them. (b) Statutory including local authorities or other bodies are grouped together without distinction. Sirsi Municipality was a local authority. A dismissal of a municipal employee by the municipality contrary to rules framed by it under the Bombay District Municipal Act. 1901 was not held to be a nullity remediable by the relief of reinstatement by a Full Bench of the Bombay High Court in Madhav Sakharam v. Sangammner Municipality 1973 1 S.L.R. 33 (29) in view of the decisions in U.P. State Warehousing Corporation and Indian Airlines Corporation (40). But an exactly contrary decision was arrived at by the Supreme: Court in Sirsi Municipality when the contravention of such rules framed under the same Act by another municipality was held to make the termination of the service of a municipal employee ultra virus and void. (c) This may be the reason why Beg, J.. in his concurring judgment has suggested that the decision in Sirsi Municipality case cannot be reconciled with the previous decision of the Court in U.P. State Warehousing Corporation case. We respectfully think that the ratio in Indian Airlines Corporation decision can hardly be distinguished from the ratio in U.P. State Warehousing Corporation case, (d) A contravention not only of statutes but also of orders or schemes made there under was held to result in ultra vires. The contravention in Barot's case was of regulations. It is placed on the same level as a contravention of orders or schemes dealt with in Life

Insurance Corporation and Calcutta Dock Labour Board decisions. It also results, Therefore, in ultra vires. (e) The principle of puremaster and servant contractual relationship is distinguished from the relationship of a statutory authority with its employees and is said to have no application to cases of employees of statutory bodies. It is again said in paragraph 29 that "employment under statutory bodies differ from ordinary private employment".

(28) The Sirsi Municipality decision is binding on us as against the decisions in U.P. State Warehousing Corporation and Indian Airlines Corporation because (a) it is a later decision which considers the previous ones, (b) it is of a larger Bench, (c) it is more consistent with a previous five judges' decision of the Court in Barot's case than with U.P. State Warehousing Corporation and Indian Airlines Corporation. Academic writers had expressed dissatisfaction at the insecurity of tenure of employees of Universities, etc., (propounded, by the Privy Council in Vidyodaya University v. Silva, referred to above) though they may not be strictly speaking civil servants. Reference to such criticisms was made by the Supreme Court in Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, . Lord Wilberforce expressly declared in Malloch v. Aberdeen Corporation that he would not follow the decision in Silva's case. It is significant that the Supreme Court in Sirsi Municipality's case cited with approval Malloch v. Aberdeen Corporation but not Silva's case in paragraph 28 of their judgment.

(29) For the above reasons, We are of the view that the Regulations framed by the Oil and Natural Gas Commission under the Oil and Natural Gas Commission Act, 1959, are indistinguishable from the Regulations framed by the State Transport Corporation which were regarded as a mandatory statutory obligation in Barot's case by the Supreme Court. The question whether they were contravened by the Commission in removing Kali Ram from service or in imposing the penalty of reduction of pay on him is, however, one of mixed fact and law and will have to be determined by the Single Bench in the light of the view expressed by us above.

(30) Reinstatement Is Discretionary In our view, however, reinstatement need not follow necessarily whenever it is found by Court that the termination of the services of an employee of a statutory corporation is a nullity. The two are to be distinguished from each other. One set of circumstances in which the two would be separated is stated by Lord Reid in Malloch v. Aberdeen Corporation at page 1284 of the report in the following words :-

" IF, then ,the respondents were in breach of duty in denying the appellant a hearing, what is his remedy ? It was argued that it would not be right to reduce the resolution of dismissal because that would involve the reinstatement of the appellant-in effect granting specific implement of his contract of employment which the law does not permit: But that would not be the effect: There would be no reinstatement. The result would be to hold that the appellant's contract of employment had never been terminated and it would be open to the respondents at any time hereafter to dismiss him if they choose to do so and did so in a

lawful manner. Unless they choose to do that the appellant's contract of employment would continue."

(31) The statutory corporation has, Therefore, a locus poenitentiae to correct the mistake made by it and to follow the correct procedure in terminating the employment of the concerned employee even after the previous termination has been set aside by the Court. It is only if the Corporation does not wish to do so that reinstatement would follow.

(32) Secondly, this Court acting under Article 226 has a discretion in granting the relief of reinstatement. If circumstances justify, the Court may simply declare that the termination of service was ultra virus and yet leave the employee merely a remedy in damages and refuse the relief of reinstatement to him. For instance, when an employee has no right to the post held by him and the employer corporation has the right to terminate his service simply by giving notice, the Court will not issue a futile writ granting reinstatement. For, the effect of such writ would be immediately nullified by the corporation by simply terminating the service of the temporary employee by a notice. We agree with the following statement of law by Professor S. A. de Smith in his "Judicial Review of Administrative Action", Second, Edition, page 582 on this point :-

" IN some cases the courts have refused applications for mandamus to restore to offices persons who have been irregularly removed, on the ground that the remedy might be of no use to the applicant, because it would still be open to the competent authority to remove him by the proper procedure".

(33) Thirdly, the conduct of a particular applicant and his motives in seeking the relief of reinstatement would also have to be scrutinised and if the applicant does not come to the Court with clean hands, reinstatement may be refused to him.

(34) Fourthly, the Court will still have to see in each particular case whether the relationship between the employer and the employee is dominantly contractual or statutory. As observed by Professor Smith at page 510, "the courts may still be disinclined to award declaratory relief in a case where the relationship, although regulated by statute, approximates to an ordinary contractual relationship between employer and employee". Barber v. Manchester Regional Hospital Board 1958 1 W. L. R. 181, (32) Vidyodaya University Council v. Silva 1965 1 W. L. R. 77 (33) and Francis v. Kuala Lumpur Municipal Councillors 1962 1 W. L. R. 1411, (34).

(35) Finally, where the employee is a "workman" working in an "industry" within the meaning of clauses (s) and (j) of section 2 of the Industrial Disputes Act, 1947, a dispute relating to his employment or non-employment or the terms of employment may become an "industrial dispute" within the meaning of clause (k) thereof. If such a dispute is referred by the appropriate Government to one of the authorities acting under the said Act, it would not be the subject-matter of a writ petition under Article 226 of the Constitution. In Tata Chemicals Ltd. and Others Vs. Kailash C. Adhvaryu, it was held that the validity of an order of

dismissal of a.n employee contrary to the standing orders framed under the Industrial Employment (Standing Orders) Act, 1946, could be challenged by way of a civil suit. The decision was referred to by the Supreme Court in Chandra Kiran Tyagi's case (at page 268 of the report) without making any observation as to its correctness. Disputes regarding the employment of those employees of statutory corporation who are carrying on industry are likely to be decided under the industrial legislation a.nd to that extent the prospect of an undue widening of the scope of Article 226 to include disputes raised by employees of statutory corporation would be avoided.

(36) The letters patent appeal as well as the writ petitions will now go back to the respective Benches for disposal in accordance with the view expressed by us above on the common question of law involved therein. We make no order as to costs of this reference.