
(1974) 01 BOM CK 0016

In the Bombay High Court

Case No : O.C.J. Appeal No. 101 of 1969

Ramesh Krishna Rao

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 31-01-1974

Acts Referred:

Constitution of India, 1950 — Article 12, 13, 13(1), 14, 19(1)
State Bank of India (Officers Service) Rules, 1992 — Rule 18, 49, 50, 51
State Bank of India (Subsidiary Banks) Act, 1959 — Section 24(1), 25, 30, 43, 46
State Bank of India Act, 1955 — Section 17(1), 17(2), 43, 43(1), 50

Citation : (1974) 76 BOMLR 552 : (1974) 2 LLJ 441 : (1974) MhLj 845

Hon'ble Judges : V.D. Tulzapurkar, J; R.M. Kantawala, J

Bench : Division Bench

Judgement

Tulzapurkar, J.—This appeal has been preferred by one Ramesh Krishna Rao (original petitioner) against the judgment and order passed by Vimadalal, J. on July 24, 1969, whereby the learned Judge dismissed his petition being Misc. Petition No. 563 of 1967.

2. A few facts giving rise to the filing of the petition may be stated : The petitioner was appointed as a probationary assistant in the State Bank of India (respondent No. 1) with effect from November 3, 1959. When that post was offered to him on October 30, 1959 the petitioner was furnished with the cyclostyled copy of the State Bank of India (Officers and Assistants) Service Rules governing his services in the Bank and was informed that he will be required to sign the declaration in form "A" appended to the Rules. By His letter dated November 3, 1959 he accepted the appointment and as required by Rules he paid a sum Rs. 1,000 as and by way of security deposit and signed the requisite declaration in the prescribed form "A" agreeing to be bound by the Rules. On August 1, 1962 the petitioner was confirmed in his service under the resolution of the Central Board of Directors of the Bank and due intimation of such confirmation was given to him by respondent No. 1's letter dated August 30, 1962. It may be stated that he was confirmed as the State Bank Officer,

Grade III. On November 21, 1964 he was posted at Bhopal as an accountant and he reported for duty there on] December 9, 1964 and actually took over the complete charge of his post on December 22, 1964. Under office order dated July 21, 1965 under telephonic instruction he was asked to hand over emergency charge of the accountant's post to one T. B. Chincholi and he was asked to proceed on a month's leave. However, under fresh telephonic instructions which were communicated to him by the Agent of the Bhopal branch on July 23, 1965 it appears that the leave was cancelled and he was transferred to Bombay where he was asked to join at the head office after availing of the usual joining time after being relieved from Bhopal branch. He however, did not report for duty at Bombay head Office on July 28, 1965 when he was expected to do but reported for duty on August 23, 1965. Since, according to respondent No. 1 Bank, the petitioner's absence at the Bombay head office from July 28, 1965 to August 23, 1965 was unauthorised, it was regarded as misconduct on his part, in respect of which, after giving him an opportunity to give his explanation, he was punished by way of censure on November 11, 1965. The petitioner's appeal to the secretary and treasurer of the Bank against the punishment by way of censure was thereafter dismissed on November 18, 1966. It appears that in the meantime on November 3, 1965 the petitioner was posted at Reva branch of the State Bank of India. He proceeded on leave for a month while he was working at Reva on January 17, 1967 and was due back at the Bombay head office on February 17, 1967. He applied for extension of leave by one month but before the question of granting extension of leave was considered, respondent No. 1 Bank thought fit to terminate his services in the interest of Bank. By a letter of the Managing Director dated February 15, 1967 the petitioner was informed that the Executive Committee of the Central Board of the State Bank of India (Officers and Assistants) Service Rules on payment of three months' salary in lieu of notice and his services were actually terminated with effect from February 18, 1967. By his advocate's notice dated March 28, 1967 the petitioner challenged the aforesaid termination of his service on the ground that the termination was not termination simpliciter but in reality it was an order of dismissal though worded in innocuous terms to circumvent a departmental inquiry provided for under Rules 49, 50 and 51 before dismissing an officer. He also challenged his transfer from Bhopal to Bombay Head Office under telephonic instructions on July 23, 1965 as having been motivated by extraneous consideration and mala fide. He called upon respondent No. 1 Bank to withdraw the so called termination of his service, failing which legal action was threatened. Thereupon the petitioner filed Misc. Petition No. 563 of 1967 on the Original Side of this Court, principally seeking two reliefs : (i) quashing or setting aside the order of termination of his services by an appropriate writ and (ii) a declaration that Rule 18 under which such termination had been effected was unconstitutional and void. He also prayed that the legality of his transfer from Bhopal to Bombay on July 23, 1955 should be examined by the Court and the same be set aside by an appropriate writ.

3. On behalf of the two respondents, viz., The State Bank of India (respondent No. 1) and V. T. Dahejia, the then Chairman of the Central Board of the State Bank of India (respondent No. 2), an affidavit in reply dated February 19, 1968 was filed denying the several submissions and grounds on which the two impugned orders were sought to be challenged. Inter alia, it was contended that the Service Rules governing the officers and assistants employed by respondent No. 1 were not statutory rules and the petitioner could not challenge the respondent's authority to terminate his services in exercise of its contractual right by way of a writ. In other words, it was contended that the service rules which govern the terms of employment of the petitioner with the respondent-Bank were in the nature of contractual terms and as such even if the termination was in breach of any Rule it would be a wrongful termination and his remedy lay in damages and he was not entitled to get a declaration that the said termination was illegal or the same should be quashed or set aside and he be regarded as having continued in service. On merits, it was contended that the services of the petitioner were terminated after respondent No. 1 was satisfied that such termination was in the best interest of the Bank and the circumstances leading to the termination of the petitioners' services were set out in great detail in para 10 of the said affidavit. It was further pointed out that respondent No. 1 had properly resorted to Rule 18 and there was no question of the respondent holding any enquiry under Rules 49 and 50 of the said Rules before terminating his services as submitted by the petitioner.

4. Before the learned Judge the petitioner pressed four grounds on the basis of which he challenged the termination of his services. In the first place, he contended that Rule 18 of Service Rules was violative of Art. 14 of the Constitution and was void; inasmuch as, the State Bank was "State" as defined in Art. 12, that the said rules had the force of law and that these conferred unguided and unfettered discretion upon respondent No. 1 Bank. Secondly, he contended that the Executive Committee of the Central Board had no power to pass the order terminating his services and same was, therefore, bad; the only authority who could have passed such an order was the Central Board itself. Thirdly, he urged that the order of termination was arbitrary, mala fide and was passed in violation of rules of natural justice. The learned Judge has recorded in his judgment that the petitioner gave up the ground of mala fide. Lastly, he contended that Rule 18 had been wrongly applied inasmuch as Rules 49 to 51 ought to have been resorted to because the order of termination was really an order of dismissal. The learned Judge negatived all the contentions urged by the petitioner before him. He took the view that it was not possible to hold that respondent No. 1 Bank which was an independent Corporation incorporated in 1955 was "other authority" within the extended definition of the expression "State" as given in Art. 12 of the Constitution. He further held that the relevant rules had not been framed under S. 50 of the State Bank of India Act, 1955 as was contended for by the petitioner, inasmuch as, S. 50 was not a provision which could be resorted to for framing service rules governing conditions of

service of the various employees of respondent No. 1 Bank; he, therefore, held that the relevant rules were not statutory rules having force of law and in that view of the matter it was not possible for him to accept the contention that Rule 18 was violative of Art. 14 of the Constitution. He accepted that respondents' contention that the Executive Committee of the Central Board had the requisite power to pass the order terminating the services of the petitioner under Rule 18. He further took view that it was a case of simple termination and not a case where any resort to Rules 49 to 51 should have been made by respondent No. 1 Bank. He did not permit the petitioner to challenge the transfer order. Having thus rejected all the grounds on which the termination was challenged, he dismissed the petition. The petitioner has come up in appeal.

5. At the outset it may be stated that though the petitioner has challenged the legality and/or propriety of both the orders, the order terminating his services dated February 15, 1967 as well as the order dated July 23, 1965 transferring him from Bhopal to Bombay, in view of the facts and circumstances of the case we do not think it would be possible for him to successfully challenge the order, of transfer dated July 23, 1965. Though Mr. Dhanuka appearing for the petitioner did not give up the challenge to the said order, he did not seriously press the same before us. Obviously on admitted facts, though with some reluctance at the initial stage, the petitioner must be taken to have acquiesced in the said order of transfer inasmuch as he reported himself for duty at the Bombay Head Office on August 23, 1965 and worked there till he was transferred to Rewa in November, 1965 and having regard to the material that has been placed by the respondents in the affidavit in reply, it will have to be held that he was transferred to Bombay in the interest of respondent No. 1 Bank. Having acquiesced in the order we do not think it would be open to him to challenge that order. Principally, therefore, Mr. Dhanuka attacked the order terminating the petitioner's service with effect from February 18, 1967 in this appeal. Though in the trial Court that order was challenged on several grounds, in this Court Mr. Dhanuka challenged it substantially on two grounds. In the first place, he contended that this was not a case purely between master and servant where the petitioner would be entitled to have the remedy in damages for wrongful dismissal but it was a case where the petitioner's services had been terminated under certain rules framed by the Central Board of respondent No. 1 Bank and the relevant service rules so framed by Central Board were in the nature of bye-laws having the force of law that cast a mandatory obligation upon respondent No. 1 Bank to observe them and an order of termination in breach of the same will have to be regarded as a nullity. Secondly, he contended that respondent No. 1 Bank was "other authority" within the extended definition of the expression "State" in Art. 12 of the Constitution and if respondent No. 1 could be regarded as "State" within the meaning of that article, then, irrespective of whether the relevant rules were bye-laws having the force of law or not, his client would be entitled to the relief sought because even if the rules were regarded as executive instructions, those instructions being violative of Art. 14 of the Constitution, the action taken thereunder will have to

be struck down by this Court. We shall deal with these two contentions one after the other.

6. It cannot be disputed that this is a case of purported termination of services of the petitioner by respondent No. 1 Bank under Rule 18 of the State Bank of India (Officers and Assistants) Service Rules framed by the Central Board of respondent No. 1 Bank on August 30, 1957 and brought into effect from January 1, 1958 and since the petitioner is in substance seeking to quash or set aside the said order and thereby impliedly seeking a declaration that he continues in service with respondent No. 1 Bank, the question that arises for our consideration is whether this is a case between master and servant simpliciter or whether the petitioner's case falls within any one of the recognised exceptions to the general rule that a contract for personal service cannot be specially enforced. The position in this respect has been clearly set out by the Supreme Court in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , after reviewing all earlier decisions, both English and Indian. After considering three English decision - (a) *Vine v. National Dock Labour Board* [1956] 3 All E.R. 93 (b) *Barber v. Manchester Hospital Board*, [1958] 1 All E.R. 322, and (c) *Francis v. Municipal Councillors* [1962] 3 All E.R. 633 -, the Supreme Court in para, 20 of its judgment has observed as follows :

"From a review of the English decisions, referred to above, the position emerges as follows : The law relating to master and servant is clear. A contract for personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. This is the normal rule and that was applied in *Barbar's* case and *Francis's* case. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant. This was the position in *Vine's* case".

After considering two of its decisions, one in *S.B. Dutt Vs. University of Delhi*, and the other in *S.R. Tewari Vs. District Board Agra* and Another, , this is what the Supreme Court has observed in para 23 of its judgment :

"From the two decisions of this Court, referred to above, the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognised exceptions to this rule and they are : To grant such a declarations in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311. (2) Reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals. (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute".

The aforesaid position which obtains in law was not disputed Mr. Dhanuka appearing for the petitioner before us in this appeal. Further he fairly conceded before us that the present case did not come under either the first or the second exception mentioned above. But he urged that this was a case which fell under the third exception, namely, it was a case of a statutory body constituted under an enactment of Parliament which had acted in breach of mandatory obligation imposed by statute, and as such the petitioner would be entitled to get necessary relief prayed for in prayer (a) of the writ petition. On the other hand, the learned Advocate-General has contended that it is a case of purely master and servant relationship, the Service Rules constituting the terms and conditions of contract of service and according to him the case falls within the ratio of the Supreme Court's decision in *Indian Airlines Corporation Vs. Sukhdeo Rai*, . The question, therefore, really is whether the petitioner's case falls within the third exception mentioned above or not.

7. It may be stated that in the trial Court when the matter was argued by the petitioner in person his contention was that the Service Rules including Rule 18 under which the action had been taken by respondent No. 1 Bank were statutory Rules or Regulations having the force of law inasmuch as these had been framed under S. 50 of the State Bank of India Act, 1955 which confers power upon the Central Board to make regulations. The learned Judge negatived that contention and came to the conclusion that these rules had not been framed under S. 50 of the Act, with the result that the rules had no force of law and in that view of the matter the learned Judge felt that it was unnecessary for him to go into the question as to whether the rules constituted a contract containing the terms and conditions of the petitioner's service with respondent No. 1 Bank. However, in this appeal it was fairly conceded by Mr. Dhanuka for the petitioner that the Service Rules would neither fall S. 49 nor under S. 50 of the State Bank of India Act, 1955. In fact, the Notice of motion which the petitioner had taken out in the appeal seeking permission to raise an alternative ground pertaining to this aspect of the matter was not pressed by him and the same was allowed to be dismissed. He, however, urged that these Rules must be regarded as Bye-laws having the force of law framed by the Central Board of respondent No. 1 Bank under S. 43 read with S. 17(1) of the Act. Section 17(1) occurs in Chapter V which deals with the topic of management and it runs as follows :

"17. (1) The general superintendence and direction of the affairs and business or the State Bank shall be entrusted to the Central Board which may exercise all powers and do all such Acts and think as may be exercised or done by the State Bank and are not by this Act expressly directed or required to be done by the State Bank in general meeting."

Section 43 provides as under :

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

service.

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

Admittedly the State Bank of India (Officers and Assistants) Service Rules have been framed by the Central Board of the State Bank on August 30, 1957 since the subject matter covered by these rules was not expressly required by the Act to be done by the State Bank in its general meeting and it does appear that the Central Board framed these rules acting under S. 43(1) of the Act. The question that arises for our consideration is whether the terms and conditions of service which are embodied in these rules merely constitute contractual terms and conditions of service obtaining between master and servant or these rules have the force of law and impose any mandatory obligation upon respondent No. 1 Bank the breach of which would render the termination of the petitioner's service a nullity. On the one hand, it has been contended on behalf of the respondents before us that these rules are nothing but a set of rules which contain merely the terms and conditions of service between the employer and the employee and give no status to the letter. On the other hand, it has been urged by Mr. Dhanuka on behalf of the petitioner that these rules, though these could not be regarded as statutory rules, or even the statutory regulations, should be regarded as bye-laws having the force of law framed by a statutory body incorporated under an enactment of Parliament and in support of his contention he relied upon a decision of Madhya Pradesh High Court reported in Dattatraya Dinkar and Others Vs. State Bank of India and Others, . It is clear that if the former contention is correct, the petition will have to be dismissed while if the latter contention canvassed before us by Mr. Dhanuka is correct, the petitioner would be entitled to get the necessary writ quashing the impugned decision. In our view, this question will have to be considered both in its factual as well as legal aspects : whether in point of fact the petitioner's employment with respondent No. 1 Bank was contractual, the rules merely embodying the terms and conditions of contract of service ? or whether the rules constitute bye-laws Bank having the force of law giving the petitioner some status ? On the latter question two things will have to be considered, namely, whether the rules would be bye-laws in the first place and secondly, even if these are regarded as bye-laws, whether these are bye-laws having the force of law, for, it is well settled that bye-laws could be of two types, consensual bye-laws which bind only those who are consenting parties thereto and bye-laws which have general applicability and bind the citizens generally and it is the latter type of bye-laws that are regarded as having the force of law. The first contention urged by Mr. Dhanuka before us will have, therefore, to be considered in both the aspects.

8. On the factual aspect, we shall presently indicate as to how the petitioner came to be employed by respondent No. 1 Bank. It was not disputed before us that pursuant to an advertisement that was issued by respondent No. 1 Bank the

post of Probationary Assistant was applied for by the petitioner and, according to the petitioner's own averment in the petition, he was recruited on being successful in an open recruitment after a written test and two oral interviews with the Local Board of Recruitment of the Bombay Local Head Office and the Central Board of Recruitment of the Central Office of the Bank and it was in pursuance of his application and on his being successful in the written test and at the interview that the petitioner was informed by respondent No. 1 by its letter dated October 30, 1959 (copy annexed and marked as Ext. B to the petition) that on the recommendation of the Local Board, the Executive Committee of the Central Board at its meeting held, on October 21, 1959 resolved that the petitioner had been appointed Probationary Assistant "under the State Bank of India (Officers and Assistants) Service Rules. With effect from the date on which you join duty." By that letter the petitioner was further informed that the printed copy of the Rules will be supplied to him and he will be required to sign a declaration in the form "A" appended to the Rules as also to sign another declaration in the form "B" given in the Appendix. He was also informed that he will be required to deposit a sum of Rs. 1,000 as security for the due observance and performance of the duties of his employment in terms of Rule 22 of the aforesaid Rules before he was permitted to join Nasik Branch. Accordingly the petitioner furnished the security deposit, signed the two requisite declarations and accepted the appointment by this letter dated November 3, 1959. The declaration in the prescribed form "A" to which the petitioner subscribed his signature ran thus :

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

The above manner in which the petitioner came to be employed by respondent No. 1 Bank clearly suggest that he entered his appointment to a contract which was entered into by him with respondent No. 1 Bank by making the necessary application, appearing in the written test and appearing for the two interview and accepting the appointment that was offered to him. By signing the declaration quoted above he agreed to be bound by the relevant Service Rules framed by the Central Board. In other words, factually the petitioner's employment was clearly the result of a contract between him and the Bank. The mere fact that respondent No. 1 Bank has been incorporated under an enactment of Parliament would not take away, without anything more, the relationship between it and its employees from the category of purely master and servant relationship. The question is whether there is anything either in the State Bank of India Act, 1955 or in the relevant Service Rules which would elevate the employees to the position of having acquired status and which imposes upon the Bank any statutory restriction or obligation limiting its power of terminating that relationship ?

9. The enactment incorporating the State Bank of India was passed with a view

to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto; this was done for extending banking facilities on a large scale, more particularly in the rural and semi-urban areas and for diverse other public purposes. Under S. 17 the general superintendence and direction of the affairs and business of the State Bank has been entrusted to the Central Board and in discharging the Bank's functions the Central Board is required to act on business principles regard being had to public interest. Obviously, to enable it to perform efficiently its functions the State Bank must engage officers, advisers and employees and in that behalf S. 43(1) confers power on the Central Board to appoint such number of officers, advisers and employees as it considers necessary or desirable and further empowers it to determine the terms and conditions of their appointment and service; such terms and conditions of appointment and service could be fixed and enumerated in the letter of appointment while appointing every officer, adviser or employee individually or could take the form of a set of rules governing each class of officers or advisers or employees and on acceptance of the appointment such officer, adviser or employee being required to agree to be bound by the concerned set of rules. On a prima facie reading of the relevant provisions of S. 43(1) read with S. 17 of the Act it appears clear to us that the matter of appointing officers, advisers and employees and determining the terms and conditions of their appointment and service is a matter of contractual freedom for respondent No. 1 Bank. In fact, under S. 43(1) there is no obligation cast upon respondent No. 1 Bank or its Central Board to frame any rules, bye-laws or regulations governing the terms and conditions of service of its employees. On the other hand, the fact that under S. 17(2) the Central Board is required to act on business principles while discharging the functions of the bank suggests that power to enter into contractual relationship with its employees resulting in pure master and servant relationship is preserved. The mere fact that fixation of terms and conditions of service of the officers, advisers and employees has been done by framing different sets of Service Rules applicable to each class cannot have the effect of taking the concerned officer or adviser or employee out of the category of purely master and servant relationship nor can it elevate him to the position of having acquired any status. In our view, having regard to the legal position which emerges on a consideration of S. 43(1) and S. 17 of the Act it seems to us clear that the power of respondent No. 1 Bank to appoint officers, advisers and employees for the efficient performance of its functions on purely contractual basis resulting in pure relationship of a master and a servant is retained and there is no provision in the Act which imposes upon the Bank or its Central Board any statutory restriction or obligation which limits its power of terminating that relationship.

10. Mr. Dhanuka on behalf of the petitioner, however, invited our attention to certain provisions contained in the relevant Service Rules themselves. He pointed out that under Rule 2 it has been provided that these rules shall apply to all Officers and Assistants in the Bank other than persons who were in the service of

the Bank on June 30, 1955 either as Officers or as Assistants. He also referred to Rules 4, 32 and 97. Rule 4 runs as follows :

"4. (1) The Central Board reserves the right of changing the rules here laid down from time to time.

Provided that every new rule or alteration in an existing rule shall take effect, unless otherwise directed by the Central Board, from the date on which the new rule alteration is passed by it in a resolution.

(2) When a new rule or alteration is passed by the Central Board, it shall be issued in the form of a circular, a copy of which shall be sent to every employee for incorporation in his book of rules."

Rule 32 which appears in Chapter 6 deals with the conduct and discipline and it runs as follows :

"32. Every employee shall conform to and abide by these rules and shall observe, comply with and obey all orders and directions which may from time to time be given to him by any person or persons under whose jurisdictions, superintendence or control he may for the time being be placed."

Rule 97 which appears in Chapter 14 dealing with miscellaneous matters runs as follows :

"97. Every employee to whom these rules apply shall subscribe to the declaration in Form A prescribed in Appendix I to these rules and an employee who has not already declared his place of domicile shall subscribe to the declaration in Form B prescribed in that Appendix."

Relying upon the provisions of the aforesaid rules he contended that it was not as if the petitioner became bound by the relevant rules by reason of declaration which he was required to sign in the prescribed form "A" under Rule 97 but it was under Rules 2(1) and 32 that whenever any person got an employment with respondent No. 1 Bank he became bound by these rules and, according to him, the mere fact that the declaration in the prescribed form "A" was required to be signed could not be regarded as a pointer to the creation of contractual relationship of pure master and servant. He also urged that the fact that Rule 4(1) reserves the right to the Central Board to change the rules, from time to time, presumably unilaterally, also Indicates that the relationship between the Bank and its employee would not be purely of master and servant. It is not possible to accept these submissions of Mr. Dhanuka for the reasons which we shall presently indicate.

11. In the first place, the Officers and Assistants become members of the staff of respondent No. 1 Bank not by virtue of rules framed by the Central Board of respondent No. 1 Bank but they become members of the staff by reason of contract of employment which is entered into between them on the one hand and respondent No. 1 Bank on the other and while the appointment is being accepted

the employee is called upon to sign a declaration in the prescribed form "A" and it is by reason of such act on his part in subscribing his signature to the printed form "A" that he really becomes bound by the relevant rules. Therefore, Rule 2(1) and Rule 32 on which reliance has been placed by Mr. Dhanuka could not be regarded as rules showing that the signing of a declaration in the prescribed form "A" is a mere formality or that without signing such declaration in the prescribed form "A" he would be automatically bound by the relevant rules in question. In fact by signing the declaration the employee acknowledges the fact that the Service Rules embody the terms and conditions of the contract of his employment. Similarly Rule 4(1) which reserves the right to the Central Board to change the rules, from time to time, is equally conceivable in purely contractual relationship of a master and a servant, for, while entering into contract of service it is open to the master to tell the servant that he is being appointed upon certain terms and conditions indicated to him including the terms that the terms and conditions are liable to be altered, from time to time, and if the servant accepts the appointment on those terms. It would be difficult to say that the rule of the type of Rule 4(1) would be inconsistent with there being purely a contractual relationship between the employer and the employee on the basis of purely a master and servant relationship. In this behalf, however, it would be pertinent to refer to Rules 99, 100 and 101 of the rules which occur in Chapter 14 dealing with miscellaneous matters. It is true that under Rule 4(1) the right has been reserved to the Central Board to alter or change the rules from time to time, but should any such alterations affect any employee or group of employees adversely or prejudicially a provision has been made in Rule 99 to 101 enabling such employee or group of employees to seek redress. Under Rule 99(1) to avoid the possibility of unforeseen hardship upon any employees or group of employees from any change in these rules made under the provisions of Rule 4 it has been provided that an employee or group of employee may appeal against the change; Rule 100 provides that such appeal together with the report of the Secretary and Treasurer or the Chief Inspector thereon shall be placed before the Executive Committee and power has been conferred on the Executive Committee to take a decision on such appeal. Rule 101 also provides that should a group of employees of not less than fifty in number wish to appeal to the Central Board to change the rules in order to remove any hardship to themselves or any of their fellow employees, they may prefer an appeal directly to the Managing Director and the Managing Director after obtaining the opinions of the Secretaries and Treasurers on the subject of appeals, lay the appeal before the Central Board for its consideration and the decisions of the decision of the Central Board is required to be conveyed to the appealing group of employees. In other words, it is not as if that Rule 4(1) confers a power on the Central Board to change the rules from time to time so as to affect the adversely the employees without giving opportunity to the employees of being heard in the matter and in appropriate cases to obtain relief. In our view, therefore, it is not possible to accept Mr. Dhanuka's contention that in view of the provisions contained in the rules on which he placed reliance it should be held that pure relationship of

master and servant was not intended to be created.

12. On the other hand, the contents of some of the rules on which the learned Advocate General has relied clearly show that what was intended to be created was purely a master and servant relationship between respondent No. 1 Bank and its employees and in that behalf reference was made by him to some of the rules dealing with the termination of service contained in S. 3 of Chapter 2. Rule 17 provides that an employee shall not resign from the service of the Bank without giving the Managing Director three calendar months' previous notice in writing of his intention to do so, failing which he shall be liable to pay to the Bank a sum equal to his substantive salary for three months. On the other side, under Rule 18 the Bank has been given the power to terminate the service of an employee other than a Probationary Assistant on giving him three calendar months' previous notice in writing or three month's substantive salary in lieu of notice. In other words, Rule 17 and 18 are complimentary to each other in the sense that under the former it is the employee who has been given the right to terminate his service with respondent No. 1 Bank by giving three calendar months' previous notice in writing while under the latter a similar right has been conferred upon the employer normal incident of contractual relationship between the parties. Similarly, our attention was invited to Rule 19 and 20 occurring in S. 3 of Chapter 2. Under Rule 19 it is provided that nothing in Rule 18 shall affect the right of the Bank (a) to retire or dismiss an employee or call upon an employee to resign without notice or substantive salary in lieu thereof, in accordance with the provisions of Rule 20 or 50; and (b) to terminate the service of an employee without notice or substantive salary in lieu thereof on his being certified by the Bank's Medical Officer to be permanently incapacitated for further continuous service in the Bank. Rule 20 runs as follows :

"20. An employee shall retire from the service of the Bank of attaining the age of fifty-five years or upon the completion of thirty years' pensionable service, whichever occurs first.

The first provides that the Executive Committee may extend the period of service of an employee, who has attained the age of fifty-five years or has completed thirty years' pensionable service, should such extension be deemed desirable in the interests of the Bank; under the second proviso, power has been conferred upon the executive Committee to call upon an employee to retire from Bank service upon completion of twenty-five years' pensionable service. On reading these rules it becomes obvious that under Rules 18 and 19 two independent rights have been conferred upon respondent No. 1 as an employer; one to terminate the service of an employee simpliciter by giving three months' notice and the other to retire him under Rule 20 or to dismiss him under Rule 50 and in case it is proposed to dismiss him for some default the procedure prescribed in Rule 50 has to be followed. Conferment of such independent rights would again be the normal feature of a contractual relationship between a master and a servant pure and simple. Thus the contents of the rules also indicate that they

partake of the nature of being contractual terms of employment. It is, therefore, difficult to accept Mr. Dhanuka's contention that the service Rules framed by the Central Board of respondent No. 1 under S. 43(1) read with Rule 17, should be regarded as bye-laws.

13. It will be useful in this connection to refer to a decision of the Madras High Court in *V. Ramiah Vs. State Bank of India*, , where two questions arose for determination : one was whether the State Bank was an "authority" within the meaning of Art. 226 of the Constitution so that an appropriate writ could issue against it or not, and the other was whether an employee of the State Bank governed by the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules, 1959 could obtain a declaration that the termination of his services was a nullity and that he continued in service or he was merely entitled to claim damages for wrongful termination ? The second question which arose for consideration necessitated the determination of the question whether the relevant Service Rules, namely, the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules. 1959 were statutory rules having the force of law or whether the said rules merely were in the nature of terms and conditions of a contract entered into by the Bank with its employees. Mr. Justice Veeraswami (as he then was) took the view that these Service Rules had not been framed wither under S. 49 or S. 50 of the Act but if at all would fall under the power conferred on the Bank to make appointments of officers and employees and to determine the terms and conditions of their appointments and service under S. 43 of the Act but further took the view that the said rules were not statutory rules nor had the force of law but merely constituted the terms and conditions of service governing the employment of the employees with the State Bank. The source of authority and the scheme of the relevant rules which obtained in the Madras case and the source of authority and the scheme of the rules which obtain in the instant case are the same and we feel that our conclusion on the question of nature of the Service Rules in the instant case receives support from the aforesaid decision of the Madras High Court.

14. However, Mr. Dhanuka for the petitioner has relied upon the decision of the Madhya Pradesh High Court in *Dattatraya v. State Bank of India*, where as regards the nature of the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules (the same with which the Madras High Court was concerned) a different view has been taken. It may be pointed out that in that case the relevant rules were also considered as having been made under S. 43(1) of the State Bank of India Act, 1955 and neither under S. 49 nor S. 50 of the Act. After considering the provisions of the State Bank of India Act and the said Service Rules the Madhya Pradesh High Court held that the rules could not be regarded as merely embodying the terms of service contract but were the bye-law made by the Bank in exercise of either inherent power of the State Bank to frame bye-laws or in exercise of power conferred on it under S. 43(1) of the Act. With regard to the Madras decision which was cited it was observed that in the Madras case the question whether the rules were bye-law made by the State

Bank was not raised and considered and the Madhya Pradesh High Court further went on to observe as follows :

"... The decision (Madras decision) cannot, therefore, be regarded as an authority for the proposition that the "Rules are not bye-laws made by the Bank. Indeed, the observation of the learned single Judge, namely, "the power under S. 43 enables the Bank no more than to fix the terms and conditions of service by entering into service agreements or otherwise in relation to the officers, advisers and employees appointed by it, does not rule out the possibility of the terms and conditions of service being fixed otherwise than by a service agreement. If, as the learned single Judge thought, rules cannot be framed under S. 43 regulating the terms and conditions of service of the Bank's employees, then the "otherwise" mode contemplated by him can only mean the method of fixing the terms and conditions of service by making bye-laws in that behalf. The decision of the Madras High Court can, therefore, be regarded as supporting the view we have taken that under S. 43 of the Act bye-laws can be made for regulating the terms and conditions of service of the Bank's employees, officers and advisers. If the "Rules" are bye-laws, then they can be challenged on the ground that they are unreasonable."

In arriving at the aforesaid conclusion the Madhya Pradesh High Court also relied upon the word "to determine" occurring in S. 43 and observed as follows :

"The words "to determine" mean "to regulate", "to prescribe imperatively." It may not be possible to construe the word "determine" as conferring on the Bank the power to make rules regulating the terms and conditions of service of its employees, officers and advisers. But even though S. 43 does not confer in the usual form the power to make bye-laws, still having regard to the position that the Bank as a Corporation has, as one of its legal incidents, the power to make byelaws, there seems no reason why the word "determine" should not be taken as conferring on the Bank the power to make bye-laws determining the terms and conditions of the appointment and service of its officers, advisers and employees."

It must be pointed out that in its decision the Madhya Pradesh High Court took the view that power to make bye-laws will have to be inferred as inherent power of the State Bank as a Corporation having been established by an enactment of Parliament or in the alternative took the view that the expression "to determine" occurring in S. 43(1) conferred that power upon the State Bank and it is in this view of the matter the Madhya Pradesh High Court took the view that there was power with the State Bank to frame bye-laws and that ultimate decision it held that assuming these to be bye-laws the relevant bye-laws was not unreasonable and as such the petitioner was not entitled to the relief sought on that ground. Strong reliance was placed upon this decision by Mr. Dhanuka in support of his contention that in the instant case also we should take the view that the relevant service rules were bye-laws having been framed by the Bank under S. 43(1) of the Act. In the first place, as we have already pointed, the decision on the

material point was obiter because the Madhya Pradesh High Court has itself observed in para 14 of its judgment that it was unnecessary for it to decide the question whether the Service Rules were bye-laws or not for it was of the view that even if the rules were regarded as bye-laws the particular Rule 18 with which the Court was concerned was not unreasonable and, therefore, relief on that ground could not be granted to the petitioner. Secondly, the aspects as to whether, assuming the rules to be bye-laws, they had the force of law does not appear to have been considered by the Madhya Pradesh High Court. That aspect of the matter does not seem to have been considered by the Madhya Pradesh High Court, presumably because in the ultimate decision it took the view that even if they were regarded as bye-laws, they were not unreasonable. Thirdly, with great respect, we do not find any discussion in the judgment of the Madhya Pradesh High Court on the question as to whether though the State Bank could be said to possess inherent power under some sections of the Act, in fact such power had been exercised and bye-laws were framed incorporating service conditions of its employees or not. The real question that arose before Court was whether even if the service rules were regarded as bye-laws there was any unreasonableness therein so that the petitioner could obtain relief. It is, therefore, not possible for us, with respect, to accede to the view that has been taken by the Madhya Pradesh High Court, especially because two important aspects - the fact that it is not obligatory for the Bank to frame rules, bye-laws or regulations for fixing the terms and conditions of service and the contents of the service rules - almost compel us to come to a conclusion that the relevant service rules obtaining in the instant case will have to be regarded as a set of rules embodying the terms and conditions of service on contractual basis.

15. The other aspect of the matter may now be considered and that is, whether the Service Rules, even if they are assumed to be bye-laws, have the force of law or not. On this aspect of the matter, the real question to consider is what is the true concept of bye-laws having the force of law ? It is common knowledge that statutory corporations do have power to frame and do frame bye-laws but it is not as if that each and every type of bye-laws has the force of law. In fact, our attention has been drawn by the learned Advocate General to a passage which occurs at p. 97 of Sir Carleton Kemp Allen's "Law and Orders", Third Edition, which is the following effect :

"Corporation possess, at common law, the power to make bye-law for the purposes for which they are constituted, but, with rare exceptions, these are binding only on their members and an examples of jurisdiction by consent rather than of delegated legislation."

That there would be two types of bye-law, one having the force of law and the other in nature of consensual bye-laws having binding effect on those who consent thereto has been recognised even in Art. 13 of the Constitution. Under Art. 13(1) it is provided that laws which are inconsistent with or in derogation of the fundamental rights to the extent of inconsistency shall be void. Sub-articles

(2) and (3) are relevant, which run as follows :

"13. (1) ...

(2) The State shall not make any law which takes away or abides the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires, -

(4) "law" includes any Ordinance, order, bye-law, rule, regulation, notification custom or usage having in the territory of India the force of law; ..."

The aforesaid provision, therefore, clearly contemplates that it is only such bye-laws which have the force of law, if they abridge or take away the fundamental right contained in Part III of the Constitution, shall to the extent of contravention be void. In Indian Airlines Corporation case the Supreme Court in para 12 of its judgment has observed as follows :

"... But all rules and regulations made by authorities in pursuance of a power under a statute do not necessarily have the force of law. In *Kruse v. Johnson* [1898] 2 Q.B. 91, while considering the validity of a bye-law made by a country council, Lord Russell described a bye-law having the force of law as one affecting the public or some section of the public, imposed by some authority clothed with statutory powers ordering something to be done or not be done and accompanied by some sanction or penalty for its non-observance. If validly made such a bye-law has the force of law within the sphere of its Legitimate operation. The function of such bye-laws is to supplement the general law by which the Legislature delegates its own power to make them."

16. It will thus appear clear that even if it were assumed for the purpose of argument that the Service Rules in the instant case are regarded as bye-laws having been framed by its inherent No. 1 Bank either in exercise of its inherent power or under S. 43(1) of the Act, the question must be answered whether these bye-laws have the force of law or not and having regard to the description of a bye-law having the force of law as given by Lord Russell in *Kruse v. Johnson* (supra), it is clear that unless these bye-laws are such that these affect the public or some section of the public and are imposed by some authority clothed with statutory powers ordering something to be done or not to be done and are accompanied by some sanction or penalty for their non-observation, these would not be bye-laws having the force of law. In our view, having regard to the nature, contents and binding effect of these Service Rules it is obvious that these could not be regarded as any buy-laws having the force of law. In the first place, it is very clear that these rules pertain to the service conditions of the employees of respondent No. 1 Bank. Secondly, these rules have no binding force *proprio vigore* but have such binding force by reason of consent of both the employee and the employer. Thirdly, these affect and bind only those who have consented thereto and do not affect the public or some

section of the public. Lastly, beyond the consent of the parties there is no other sanction behind these rules by way of any penalty for non-observance or non-compliance thereof. It is also clear that the function of these rules is not to supplement the general law. Having regard to these aspects, which emerge clearly it is difficult to accept Mr. Dhanuka's contention that these service rules are bye-laws having the force of law.

17. In view of the above discussion it seems to us very clear that both on the factual aspect as well as the legal aspect it will have to be held that the relationship between respondent No. 1 Bank and the petitioner was purely that of master and servant and that there is nothing in the Act or the Service Rules which imposes on respondent No. 1 Bank or its Central Board any statutory restriction which limits its power terminating that relationship. We feel that the petitioner's case squarely falls within the ratio of the decision of the Supreme Court in Indian Airlines case. Mr. Dhanuka attempted to rely upon the later decision of the Supreme Court in Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , but after going through that decision we are clearly of the opinion that the said decision in no way affects the ratio of earlier decision in Indian Airlines case. In this view of the matter, the petitioner's remedy would be in damages for wrongful termination and he is not entitled to quash the impugned order and seek reinstatement.

18. The next ground on which Mr. Dhanuka contended that the petitioner would be entitled to the relief sought was that the State Bank fell within the expression "other authorities" occurring within the extended inclusive definition of "the State" given in Art. 12 of the Constitution. His contention in brief has been that if the State Bank of India is "other authority" within the inclusive part of the definition of "the State" as given in Art. 12 of the Constitution then, irrespective of the question whether the relevant rules are bye-laws having the force of law or not, the petitioner would be entitled to the reliefs sought, for, according to him, the rules will amount to executive instructions and since these executive instructions were discriminatory and, therefore, violative of Art. 14 of the Constitution, the petitioner was entitled to have termination quashed. In order to succeed on this ground the petitioner must first establish that respondent No. 1 Bank is "State" as defined in Art. 12. Article 12s runs as follows :

"In this Part, unless the context other wise required, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of Indian or under the control of the Government of India."

In support of his contention that the State Bank of India should be held to be "other authority" within the inclusive part of the definition of "the State" Mr. Dhanuka has pointed out that the previous view which had held the field that the expression "all local and other authority" in Art. 12 should be interpreted ejusdem generis has been expressly discarded by the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, and he

further pointed out that after examining the provisions of Rajasthan State Electricity Act the Court held that the State Electricity Board was "other authority" within the extended definition of "State" and while discarding the rule of ejusdem generis in the context of proper interpretation of the expression "other authorities" contained in Art. 12, the Supreme Court observed thus :

"In our opinion, the High Courts fell into an error in applying the principle of ejusdem generis when interpreting the expression "other authorities in Art. 12 of the Constitution as they overlooked the basic principle of interpretation that, to invoke the application of ejusdem generis rule, there must be a distinct genus or category running through the bodies already named ... Maxwell in his book on "Interpretation of Statutes" explained the principle by saying : "But the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words ... Unless there is a genus or category, there is no room for the application of the ejusdem generis doctrine".. In Art. 12 of the Constitution, the bodies specifically named are the Executive Governments of the Union and the States, the Legislatures of the Union and the States, and local authorities. We are unable to find any common genus running through these named bodies, nor can these bodies be placed in one single category on any rational basis. The doctrine of ejusdem generis could not, therefore, be applied to the interpretation of the expression "other authorities" in this article".

Mr. Dhanuka strongly relied upon the following observations of the Court in para. 5 of the judgment :

"The meaning of the word "authority" given in Webster's Third New International Dictionary, which can be applicable is "a public administrative agency or corporation or corporation having quasi-Governmental powers and authorised to administer a revenue-producing public enterprise." This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out Governmental or quasi-Governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Art. 12 of the Constitution."

Mr. Dhanuka further pointed out that after referring to two of its earlier decisions, one in *Ujjam Bai v. State of Uttar Pradesh* A.I.R (1962) 1621, and the other in *K. S. Ramamurthy v. Chief Commr., Pondicherry* A.I.R (1963) 1464, the Court observed in para. 6 as under :

"... These decisions of the Court support our view that the expression "other authorities" in Art. 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities.

Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Art. 19(1)(g). In Part IV, the State has been given the same meaning as in Art. 12 and one of Directive Principles laid down in Art. 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Art. 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Art. 298 to carry on any trade or business. The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Art. 12. On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. In these circumstances, we do not consider it at all necessary to examine the cases cited by Mr. Desai to urge before us that the Board cannot be held to be an agent or instrument of the Government. The Board was clearly an authority to which the provisions of Part III of the Constitution were applicable."

Mr. Dhanuka further pointed out that Mr. Justice Shah in a separate judgment in that very case indicated that he was not in agreement with the view that had been expressed in the leading judgment of the Court in such wide terms and Mr. Justice Shah took the view that the authorities, constitutional or statutory, invested with power by law not sharing the sovereign power do not fall within the expression "State" as defined in Art. 12. In para. 9 of the judgment Mr. Justice Shah after considering several provisions of the Electricity (Supply) Act, 1948 and the powers that had been conferred upon the Board under that Act expressed his view as under :

"The Board is an authority invested by statute with certain sovereign power of the State. It has the power of promoting co-ordinated development, generation, supply and distribution of electricity and for that purpose of make, alter, amend and carry out schemes under Chap. V of the Electricity (Supply) Act, 1948, to engage in certain incidental undertaking; to organise and carry out power and hydraulic surveys; to conduct investigation for the improvement of the methods of transmission; to close down generating station; to compulsorily purchase generating stations, undertaking, mains and transmission lines; to place wires, poles, brackets, appliances, apparatus, etc., to fix grid tariff; to issue directions for securing the maximum economy and efficiency in the operation of electricity undertakings; to make rules and regulations for carrying out the purpose of the Act; and to issue directions under certain provisions of the Act and to enforce compliance with those directions. The Board is also invested by statute with extensive powers of control over electricity undertakings. The power to make rules and regulations and to administer the Act is in substance the sovereign power of the State delegated to the Board. The Board is, in my judgment,"other

authority" within the meaning of Art. 12 of the Constitution".

Mr. Justice Shah further observed in para. 10 as under :

"I am unable, however, to agree that every constitutional or statutory authority on whom powers are conferred by law is "other authority" within the meaning of Art. 12. The expression "authority" in its etymological sense means a body invested with power to command or give an ultimate decision, or enforce obedience, or having a legal right to command and be obeyed".

Finally Mr. Dhanuka relied upon the observations of Mr. Justice Shah in para. 12 of the judgment :

"In my judgment, authorities constitutional or statutory invested with power by law not sharing the sovereign power do not fall within the expression "State" as defined in Art. 12. Those authorities which are invested with sovereign power, i.e., power to make rules or regulations and to administer or enforce them to the detriment of citizens and others fall within the definition of "State" in Art. 12, and constitutional or statutory bodies which do not share that sovereign power of the State are not, in my judgment "State" within the meaning of Art. 12 of the Constitution".

Principally relying upon the observations of the Court in paras 5 and 6 of the leading judgment of the Court and also on the fact that Mr. Justice Shah had expressed a narrower view than the one expressed in the leading judgment of the Court, Mr. Dhanuka urged before us that this decision of the Supreme Court is an authority for two propositions, namely, that in interpreting the expression "other authority" as occurring in Art. 12 of the Constitution the doctrine of ejusdem generis has to be discarded and the expression "other authority" is wide enough to include within it every authority created by statute and functioning within the territory of India or under the control of Government and according to him, respondent No. 1 Bank being a statutory Corporation constituted by virtue of the Act of Parliament, viz., the State Bank of India Act, 1955 and the same being under the control of Government of India, it would come within the expression "other authority" occurring in extended meaning of the expression "State" as given in Art. 12, notwithstanding the fact that its principal function partakes of the nature of commercial or trading activity like banking business. He further contended that though Mr. Justice Shah had expressed his view by stating that authorities constitutional or statutory invested with power by law not sharing the sovereign power do not fall within the expression "State" as defined in Art. 12, that narrower view could not prevail as against the view expressed in the leading judgment of the Court and in view of the observations which occur in paras. 5 and 6 of the judgment, which we have quoted above, he contended that the State Bank would be "other authority" within the extended meaning of the expression "State" as defined in Art. 12 of the Constitution. He elaborated his contention in this way. According to him, the definition of "State" in Art. 12 was inclusive definition and the expression "other authority" was of widest amplitude

and any public body created for promoting the educational and economic interests of the weaker sections of the people as mentioned in Art. 46 or serving similar public purpose would be "State". He also went on to contend that any public body functioning under the control of the Government of India and with power to frame rules, regulations and bye-laws would be "State", power to frame rules and regulations as has been conferred on the State Bank under Ss. 49 and 50 of the Act being pieces of delegated or sub-ordinate legislation. He further contended that it was not necessary that the authority or body created under the Constitution or by a statute should perform governmental or quasi-governmental functions so as to come within the expression "other authority" and such authority or body, according to the leading judgment, need not exercise sovereign power.

19. With a view to canvass the aforesaid elaboration Mr. Dhanuka took us through the several provisions of the State Bank of India Act, 1955 as also some of the provisions of the State Bank of India (Subsidiary Banks) Act, 1959 and he obviously did so to bring out the fact that the State Bank was a statutory Corporation incorporated for undertaking functions meant to serve public purposes and which were in public interest and it was functioning under the control of the Government of India. In that behalf he first invited our attention to the preamble of the Act under which the State Bank of India was constituted. The preamble runs as follows :

"Whereas for the extension of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for divers other public purposes it is expedient to constitute a State Bank for India, and to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto".

He referred to S. 3 of the Act under which the State Bank of India has come to be incorporated or established, which, according to him, indicates the fact that it was a statutory Corporation enacted under an enactment of Parliament. Particular reference was made by him to Chapter V, which deals with Management of the State Bank of India, especially S. 16(5) and S. 18 of the Act. He pointed out that under S. 16 it has been provided that unless otherwise provided by the Central Government, by notification in the Official Gazette, the Central Office of the State Bank shall be at Bombay, an aspect indicating the control of the Government over the State Bank. He further pointed out that sub-s. (5) of S. 16 casts an obligation upon the State Bank to establish not less than 400 branches in addition to the branches referred to in sub-s. (3) within 5 years of the appointed day or such extended period as the Central Government may specify in that behalf and that the places where such additional branches were to be established shall be determined in accordance with any such programme as may be drawn up by the Central Government from time to time in consultation with the Reserve Bank and the State Bank, and no branch so established shall be closed without the previous approval of the Reserve Bank. Section 18(1) was

particularly relied upon by him to show that in the discharge of its functions including those relating to a subsidiary bank the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank, give to it. He further pointed out that even the composition of the Central Board to whom general superintendence and direction of the business of the State Bank has been entrusted has been so made under S. 19 of the Act that certain members thereon would be either under the control of the Central Government or representatives of the Central Government; for instance, the Chairman and Vice Chairman of the Board are required to be appointed by the Central Government in consultation with the Reserve Bank and after recommendation made by the Central Board in that behalf and that two managing directors, if any, appointed by the Central Board are required to be appointed with the approval of the Central Government. There is also a provision that there shall be not less than two and not more than six directors to be nominated by the Central Government in consultation with the Reserve Bank. Under S. 24 it has been provided that it is the Central Government who can, after consulting the Reserve Bank, remove from office the Chairman or the Vice-Chairman and so far as removal of a managing director from office is concerned, the Central Board can do so but after taking approval of the Central Government. Section 25 indicates that even in the matter of filling casual vacancies in the Office of the Chairman and Vice-Chairman, the Central Government has a voice and under Ss. 27, 28 and 29 the remuneration of each of the three - Chairman, Vice-Chairman and Managing Director - is required to be approved by the Central Government. He also invited our attention to the provisions of S. 32 of the Act under which it is contemplated that the State Bank shall act as agent of the Reserve Bank at all places in India where it has a branch and where the Reserve Bank has none, though he accepted the fact that under the said provision the State Bank has to act as agent of the Reserve Bank only for the purposes indicated in cls. (a) and (b) of S. 32(1). He further invited our attention to the provisions of S. 33(xa) which provides that inter alia the State Bank may carry on and transact any kind of business acting as agent of the Central Government or State Government or any Corporation in implementing any scheme for financing the construction of dwelling houses, and in advancing or lending of money from out of the funds placed at its disposal as such agent by the Government or Corporation to any person upon such security (including the security of any immovable property) and on such terms and conditions and for such periods as may, notwithstanding anything contained in the Act, be approved by the Government or corporation by which such funds have been placed. Clause (xxi) of S. 33 provides that the State Bank could undertake any other kind of business which the Central Government in consultation with the Reserve Bank and on the recommendation of the Central Board may authorise. Lastly, he referred to the provisions of Ss. 49 and 50. He pointed out that under S. 49 power had been conferred upon the Central Government to make rules to carry out the purposes of the Act and under S. 50 the Central Board has been given

the power to make regulations not inconsistent with the Act and the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act, after consultation with the Reserve Bank and with the previous sanction of the Central Government.

20. As regards 1959 Act being The State Bank of India (Subsidiary Banks) Act, 1959, he referred us to the provisions of Ss. 5(2), 6(2), 6(3), 7(1), 24(1), 25, 30, 43, 46 and 47 with a view to indicate what control the State Bank exercises over subsidiary banks. He particularly emphasised the provisions of S. 47(1) under which the State Bank has been given the power to cause inspection to be made of any of the subsidiary banks and sub-s. (2) which casts a duty upon every director or officer of such bank to produce to the inspecting officer all documents, books, accounts, securities, etc., that may be in his custody or power and sub-s. (3) which provides penalty if default is made by such director or officer of subsidiary bank in producing whatever is required by the inspecting officer. He also referred us to Ss. 3 and 5 of the Act which indicate the control of the Central Government over subsidiary banks. Provisions similar to Ss. 49 and 50 of the 1955 Act are contained in Ss. 62 and 63 of the 1959 Act to which also our attention was invited by Mr. Dhanuka.

21. After taking us through the aforesaid provisions of the two enactments Mr. Dhanuka urged that four or five salient features emerge clearly therefrom - features pertaining to the incorporation of the State Bank and its objects, control of the Central Government over it, funds of the Bank, nature of functions undertaken by it, powers of inspection and issuing directions during such inspection to subsidiary banks and securing obedience of such directions on pain of penalty, and powers to frame rules and regulations and relying on these features which emerge from the two Acts he contended that the State Bank should be regarded as "others authority" and, therefore, "State" within the inclusive part of the definition given in Art. 12. It cannot be disputed that the State Bank of India has been a statutory Corporation incorporated under an enactment of Parliament, nor can it be disputed that in discharging its functions including those relating to a subsidiary bank the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it (vide S. 18 of the 1955 Act). But there are two or three broad aspects which we would like to emphasise while considering the salient features that have been pressed into service by Mr. Dhanuka. In the first place, the Act of 1955 was enacted principally for the purpose of constituting a State Bank for India with a view to transfer to it the commercial banking undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto. This becomes very clear from the Statement of Objects and Reasons where the principal purpose for which the State Bank was to be constituted has been explained thus :

"The Reserve Bank of India had appointed in August, 1951 a Committee of Direction for conducting an all-India rural credit survey. The General Report of

the survey embodying the Committee's recommendations was received last year. The report makes comprehensive recommendations relating to numerous aspects of the problem of rural credit. One of the important recommendations and an integral part of the solution of the rural credit problem propounded by the Committee is the setting up of a State Bank of India as "one strong integrated State-partnered commercial banking institution with an effective machinery of branches spread over the whole country for stimulating banking Development by providing vastly extended remittance facilities for co-operative and other banks and following policy which would be in effective consonance with national policies adopted by Government without departing from the canons of sound business".

The Statement of Objects and Reasons also indicates that the State Bank was contemplated to be a commercial banking institution having a share capital and that the Reserve Bank will always hold a minimum share holding of 55 per cent in the paid-up capital of the Bank, and by virtue of this holding and the composition of the Board of Directors of the Bank as well as by virtue of the powers to give directions in matters of policy involving public interest vested in the Central Government, it was provided that the general working of the State Bank of India shall be responsive to and in consonance with Government policies while the autonomy of the institution in its day-to-day working was to be fully maintained. In other words, two things became apparently clear. In the first place, the recommendation which was accepted was that the State Bank of India was to be constituted as one strong integrated State-partnered commercial banking institution and secondly, whatever functions were undertaken by the State Bank in accordance with national policies, that were adopted by the Government, those functions were to be performed "without departing from the canons of sound business". In other words, though the general working of the State Bank of India was to be responsive to and in consonance with Government policies, the autonomy of the institution in its day-to-day working was to be fully maintained. It is in the light of these objective which have been enunciated in the Statement of Objects and Reasons that the several provisions to which our attention was drawn by Mr. Dhanuka will have to be regarded. It cannot, therefore, be disputed that though the State Bank came to be incorporated as a statutory-Corporation (S. 3) and though it was to act in certain matters as agent of the Central Government or Reserve Bank (Ss. 32 and 33) and though it was to be guided in matters of policy involving public interest by the directions to be issued by the Central Government or Reserve Bank (S. 18), primarily and essentially it was a banking undertaking which was to be carried on by it in accordance with canons of sound business principles and in its day to day working its autonomy was to be fully maintained. Looked at from this angle, certain provisions on which Mr. Dhanuka relied, particularly Ss. 16(5), 18 and those dealing with the composition of the Central Board, etc., get easily explained. Since the Central Government through the Reserve Bank was going to be the major shareholder it would be natural to provide that such major shareholder should have control and be in a position to give guidance and

directions in matters of policy, but a close scrutiny of these provisions will clearly show that the so-called control of the Central Government has been limited to matters of policy involving public interest and as regards the primary functions of the banking institution which are to be carried out by the Bank, no interference by the Central Government is contemplated. In fact, S. 17(2) of the Act makes the position very clear, which provides that the Central Board in discharging its functions shall act on business principles, regard being had to public interest and even as regards composition of the Central Board it would be pertinent to observe that the said Board was also to include on it representatives of other shareholders. Similarly the power of inspection and of issuing direction during such inspection to subsidiary banks and securing obedience of such directions on pain of visiting penalty on the defaulter contained in S. 47 of the 1959 Act on which strong reliance was placed by Mr. Dhanuka is again a provision which is commonly found in enactments dealing with joint stock companies, for instance it is found in the Companies Act; such power is nowhere akin to a power to command or give an ultimate decision or enforce obedience or having a legal right to command and be obeyed. In this view of the matter, the State Bank Corporation will have to be regarded as an independent autonomous Statutory Corporation primarily undertaking commercial banking operations with the State as its principal partner having the largest share holding of 55 per cent in the paid-up capital. Therefore, the features emerging from the provisions of several sections of the two Acts on which Mr. Dhanuka relied cannot, in our view avail him as it was not disputed before us that a Statutory Corporation carrying on the business of a commercial banking undertaking could not be said to be carrying on any governmental or quasi-governmental function.

22. However, Mr. Dhanuka contended that according to the leading judgment of the Supreme Court in Electricity Board, Rajasthan case, every authority created by a statute and functioning within the territory of India or under the control of the Government of India, irrespective of whether it performed governmental or quasi-governmental functions, will fall within expression "other authority" occurring in inclusive part of the definition of "State" given in Art. 12 and for that purpose he relied upon observations in paras. 5 and 6 of that judgment. The relevant observations, if read out of context, would undoubtedly be very wide but those observations will have to be understood in the context of the points decided by the Court in this case. In the first place, the Court clearly rejected the earlier view which had held the field, namely, that the doctrine of ejusdem generis should be applied while interpreting the expression "other authority" occurring in Art. 12 and the reason was that before ejusdem generis could be attracted it was necessary that there should be a common genus and the Court found that there was no such common genus amongst the bodies mentioned earlier in Art. 12. The Court pointed out that in Art. 12 the bodies specifically named were the Executive Government of the Union and the State, the Legislatures of the Union and the States and local authorities which could not be placed into one single category and, therefore, the Court held that the doctrine

ejusdem generis could not be made applicable to the interpretation of the expression "other authority" occurring in the article. But that is one point that was decided by the Court. Having discarded the doctrine of ejusdem generis, their Lordships turned to the dictionary meaning of the word "authority" and in para. 5 they quoted the meaning of the word "authority" given in Webster's Third New International Dictionary, which was applicable and according to them the meaning of the word "authority" would be "a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue producing public enterprise". The Court further went on to observe that "this dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-government functions". In other words, they clearly accepted the proposition that according to the dictionary meaning of the word "authority" given in Webster that all bodies created by a statute on which powers were conferred to carry out governmental or quasi-governmental functions would fall within the expression "other authority" as occurring in the extended meaning of the expression "State" given in Art. 12. Thereafter, the Court has further gone on to add as follows :

"... The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India"

This latter observation cannot be read independently of the former as was suggested by Mr. Dhanuka but has to be read along with the former in the sense that a body or an authority created by a statute on whom powers are conferred to carry out governmental or quasi-governmental function would be "other authority" and such body or authority if functioning within the territory of India or under the control of Government of India would be "other authority". That is to say, the body or authority mentioned in the latter observation must have power to perform governmental or quasi-governmental functions. That these two observations will have to be read in the way indicated above would become clear from the manner in which the Court laid emphasis on certain aspects of powers conferred upon the Electricity Board under the State Electricity Act which in their view went to make that Board a "State". It is true that in para 6 also a particular observation has been relied upon by Mr. Dhanuka. He has pointed out that after referring to the decision in *Ujjam Bai v. State of Uttar Pradesh*, and in *K. S. Ramamurthy v. The Chief Commissioner*, the Supreme Court has observed as follows :

"... These decisions of the Court support our view that the expression "other authorities" in Art. 12 will include all constitutional or statutory authorities on whom powers are conferred by law."

and according to him, this particular observation was very wide in its effect and should be given proper weight. It is true that this observation could be interpreted in a wide manner but then this observation will have to be read in the

context of further observations made by the Court in that very paragraph. In the observations which follow the Supreme Court was clearly at pains to point out that the fact that some of the powers conferred upon such statutory corporations might include powers for the purpose of carrying on commercial activities, that aspect was not really material and in order to show how that aspect was not material, the Court went on to point out that even the State itself had been envisaged as having the right to carry on trade or business as mentioned in Art. 19(1)(g) and that in Part IV of the Constitution the State had been given the same meaning as in Art. 12 and one of Directive Principles laid down in Art. 46 was that the State shall promote with special care the educational and economic interests of the weaker sections of the people. Applying this reasoning to the Electricity Board the Court went on to point out that the circumstance that the Board under the Electricity Supply Act was required to carry on some activities of the nature of trade or commerce did not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Art. 12. But thereafter the Court went on to point out what was the essence of the matter. The Court observed as follows :

"... On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence."

In other words, these particular provisions contained in the Electricity (Supply) Act which conferred powers on the Board to give directions, the disobedience of which was made punishable as a criminal offence, was the aspect which was mainly relied upon by the Supreme Court for the purpose of coming to the conclusion that the Electricity Board of Rajasthan fell within the expression "other authority" occurring in the extended meaning of the expression "State" given in Art. 12 of the Constitution.

23. We are supported in the above interpretation of the Supreme Court judgment by two further judicial pronouncements; one of this Court and the other of the Supreme Court itself. In *Pramodrai Shamaldas v. L.I. Corp.*, (1968) 71 Bom. L.R. 286, a question arose whether Life Insurance Corporation fell within the definition of the expression "the State" in Art. 12 of the Constitution and while considering this question this Court was required to consider the judgment of the Supreme Court in *Electricity Board, Rajasthan* case. At p. 289 of the report this is what the Division Bench of this Court has observed :-

"It is clear from the judgment of Mr. Justice Bhargava that the Supreme Court adopted the test formulated by Mr. Justice Ayyangar in *Ujjam Bai*'s case and held that the Electricity Board was an authority within the meaning of Art. 12. It is not possible to read the judgment to say that "authority" includes any and every autonomous body merely because it is constituted by a statute, whatever be its functions and this could not be so. The very fundamental conception of an authority is that there is in it power to command and compel its obedience either by enforcing the same or by punishing disobedience. The Electricity Board had

such powers while administering the law framed by the Parliament and, therefore, the Court held that it fell within the meaning of Art. 12. If the Court intended to hold that merely because it was constituted under a statute of the Parliament or of the State Legislature and thus it fell within Art. 12, the subsequent discussion could not be necessary."

In other words, the Supreme Court judgment in *Electricity Board, Rajasthan* case has been interpreted by this Court to mean that in that case the Supreme Court took the view that the Electricity Board fell within Art. 12, principally because of the fact that the Electricity Board had powers to issue directions and compel their obedience either by enforcing the same or by punishing disobedience. That it was this aspect of the power which influenced the mind of the Supreme Court while deciding *Electricity Board, Rajasthan*, case is borne out by a later decision of the Supreme Court in *Indian Airlines v. Sukhdeo Rai*. In regard to the decision of the Supreme Court in *Electricity Board, Rajasthan* this is what Justice Shelat has observed in *Indian Airlines Corporation* case :

"... In *Electricity Board, Rajasthan v. Mohan Lal*, where this Court held the Board, set up under the Electricity (Supply) Act 54 of 1948, as a State within the meaning of Art. 12 of the Constitution against which mandamus could issue under Art. 226, emphasised the fact that Act contained provisions which empowered the Board to issue directions, the disobedience of which was punishable as a penal offence."

In other words, amongst the power conferred upon the Board, the Board had been conferred powers which pertained to the State and some functions of the State were transferred to the Board and it was on this basis that the Electricity Board was regarded as falling within the expression "other authority" within the extended definition of "State" as given in Art. 12 of the Constitution. The observations on which Mr. Dhanuka has relied cannot be read out of context and even the wide observation on which he relied if read properly in the context of definition of "authority" as appearing in Webster and held applicable by their Lordships it would be clear that every corporation created by statute whatever be its functions would not fall within the expression "other authority" occurring in the extended definition of "State" as given in Art. 12 of the Constitution but such authority must have within its power some functions which partake of the nature of governmental or quasi-governmental functions. In this view of the matter, it will be difficult to accept Mr. Dhanuka's contention that the State Bank of India falls within the expression "other authority" occurring within the extended definition of "State" given in Art. 12 of the Constitution.

24. Having regard to the aforesaid discussion, therefore, the other aspect as to whether the State Bank of India is under the control of the Government of India or not really does not arise, for, a statutory body must first be "authority" within the meaning of that expression as defined in Webster and as accepted by the Supreme Court before one considers the further question whether it is or is not under the control of the Government of India and since we have come to the

conclusion that the State Bank of India is not an authority within the definition of the expression as accepted by the Supreme Court in Electricity Board, Rajasthan case, we are clearly of the view that the second ground on which the appellant has challenged the order or termination must also fail.

25. We may mention that our attention was invited to a number of cases by Mr. Dhanuka on the point as to what statutory bodies could come within the expression "other authority" occurring in extended definition of "State" in Art. 12 and these decisions pertain to bodies like University of Patna Umesh Chandra v. V. N. Singh A.I.R (1968) Pat. 3 School Board of Society registered under the Societies Registration Act, Mohinder Singh Vs. Union of India, , S.V. Raman Vs. The Madras State Warehousing Corporation, and Life Insurance Corporation S. L. Sharma v. L. I. Corporation. (1970) A.L.J. 214. However, in view of the conclusion which we have reached above in regard to State Bank under the State Bank of India Act, 1955, we do not think it necessary to refer to any of those decisions. 26. Since both the grounds on which the petitioner challenged the termination of his services fail, the appeal is liable to be dismissed and we accordingly dismiss the same.

26. As regards costs, Mr. Dhanuka says that there should be no order as to costs even though his client has failed. The learned Advocate General states that if the petitioner is prepared to make a statement that he will not claim costs at any stage of the proceedings even if he takes up the matter to the Supreme Court and succeeds there he is agreeable that there should be no order as to costs of this appeal and he is also prepared to waive order for costs which has been made in his favour by the learned trial Judge. The petitioner through his counsel Mr. Dhanuka states that he is agreeable not to claim costs throughout irrespective of the result of any appeal which he might prefer to the Supreme Court. The Advocate General also states that in that event his client will not claim costs irrespective of the result throughout.

27. It is, therefore, directed that there shall be no orders as to costs throughout irrespective of the result that may be obtained finally in the matter.