(1966) 12 MAD CK 0020

In the Madras High Court

Ramiah (V.) APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 23-12-1966

Acts Referred:
Constitution of India, 1950 — Article 10, 19, 220, 226, 311
Industrial Disputes Act, 1947 — Section 2

Citation : (1968) 2 LLJ 424

Hon'ble Judges : M. Ananthanarayanan, C.J;M. Natesan, J

Bench : Division Bench

Judgement

M. Ananthanarayanan, C.J.—The appellant, V. Ramiah, was employed as a cashier in the State Bank of India, Madras. Aftera prolonged

enquiry, upon charges framed, the local board of the bank, by proceedings dated 23 February 1962, intimated to the appellant that they were

terminating his services under Rule 14 of the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules, after tendering him two

months'' salary, in lies of notice, as provided for in Clause 1 of the Service Agreement. The appellant instituted Writ Petition No. 528 of 1962,

before Veeraswami, J., for the issue of a writ of certiorari quashing this order upon the grounds shown. In a judgment, in which the respective

contentions of parties have been elaborately dealt with the learned Judge held that no case has been made out for interference with this order under

Article 226 of the Constitution. The appellant has appealed from this judgment.

2. The arguments presented before us by the learned Advocate-General for the appellant, and the learned Counsel for the respondent-bank (Sri

V.K. Thiruveakatachari) do involve certain questions of considerable interest, and some significance. They impinge upon the amplitude of our power under Article 226, in interfering with orders of this kind, which ex facie are orders terminating an employment under a power derived from

contract, by a statutory body, which, indisputably, has certain functions affecting the public, and also may be said to possess a quasi-governmental

character. Another of the vital questions is, whether such a body acts as a tribunal in this kind of situation, and is bound to exercise its power as a

quasi-judicial act, subservient to the norms of natural justice. A third question is, whether the order of termination, which could be termed the

outcome of a disciplinary proceeding, or to be interpreted as a punishment imposed by the respondent-bank under powers of its disciplinary

jurisdiction, or, as, what the order purports to be, a simple termination under contract. It may be best, even before we proceed into the facts,

which could be compressed into a relatively brief scope, for the purpose of this writ appeal that these several questions are first formulated.

3. Accordingly, we may first formulate the questions, which arise in this writ appeal, as hereunder:

(1) Is the State Bank of India, constituted under the State Bank of India Act, 1955, a ""public authority"" in law and an ""authority"" within the meaning

of Article 226, to whom writs of certiorari, prohibition, mandamus, etc; could issue? In this respect is the amplitude of the power of the High

Courts under Article 226, wider than the aggregate of the prerogative writs in the United Kingdom ?

(2) Is the order of the respondent-bank; dated 23 February 1962, terminating the employment of the appellant, an order passed purely upon the

power derived from the contract between the parties? If it is, should the appellant be strictly referred to his remedy in common law for damages for

breach of contract, assuming that the termination was wrongful? Or, is the order, however, seemingly disguised as an exercise of a power derived

from contract; in substance and verity, a punishment imposed on the appellant in disciplinary jurisdiction ?

(3) If the order was in disciplinary jurisdiction, and it is conceded that the public authority (respondent-bank) was bound to act quasi-judicially,

was the actual enquiry vitiated by a failure to observe the norms of natural justice ?

(4) What is the character of the State Bank of India Rules, under certain rules of which, notably Rules 89 and 40, the actual enquiry was held ? Do

these rules possess statutory character, or are they purely administrative? Can an Infringement of these rules, or any of them, be canvassed in writ

Jurisdiction ?

(5) When can it be held that a ""public authority"" like the State Bank of India, is bound to act quasi-judicially ? What is the resolution of the

apparent conflict in the case-law, particularly of the United Kingdom, on this aspect ?

4. As far as the facts are concerned; a quite brief conspectus will be here sufficient. We shall later deal, more elaborately, with the special aspects

of those facts; which require our scrutiny. The starting point of this enquiry was a letter from the Agent of the Madarantakam Branch of the State

Bank of India, enclosing complaints from certain persons, such as, one Inderohand Jail Sowear and another Manakchand So wear, against the

appellant (V. Ramiah), who was the head cashier of the bank. Sri Thiruvenkatacohari stresses that. In its reply, dated a February 1861, the lead

office (Madras) did point Out there was a likelihood that such petitioners might be biased, because of the vigilance that might have been exhibited

by the cashier in the performance of his duties. However, there was a detailed investigation by an officer of the bank (K.S. Vijayaraghavas), and

the ultimate outcome was the formulation of the four charges la the charge-memorandum of the record. These refer to infringements. of Rules 33(1)

and 86 of the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules, and, briefly stated, amount to averments of private

dealings by the officer with constituents of the bank at Madurantakam in the shape of loans, and issues of post dated cheques, which the appellants

must necessarily have known would be dishonoured, in view of the actual balances to his credit. There were several explanations of the appellant,

and these was an elaborate enquiry in the presence of Sri R.N. Chettur, who acted as the tribunal in this respect, the secretary and treasurer the

investigating officer, two other officers and the appellants. The script of this enquiry occupies a number of pages of the record. We shall inter deal

with the specific grounds of attack, comprised in the arguments of the learned Advocate-General. After the findings of the enquiry had been duly

submitted to the local board, and considered by the board, the board purported to terminate the services of the appellant by means of the letter dated 23 February 1962, As the interpretation of this letter, or memorandum, is one of the major aspects of this appeal, no apology is necessary

for setting forth this document alone verbatim here.

5. The letter is as follows:

Dear Sir,

I have to advise that the local board, after having given full consideration to your case at its meeting held today have come to the conclusion that

although your misconduct deserves the extreme penalty of dismissal from the bank''s services, on grounds of compassion, your services should be

terminated under role 14 of the Stale Bank of India (Sub-Accountants and Head Cashiers) Service Rules, and have resolved to terminate your

services by giving yon two mouths'' salary in lieu of notice, as provided for in Clause (1) of your agreement for service with the bank. Accordingly

your services stand terminated with effect from today and we enclose two payment orders in your favour-

(1) for Rs. 319.06, representing the salary and allowances due to you up to date, and

(II) for Rs. 1,005,50 representing salary and allowances in lieu of the two months'' notice.

Please acknowledge receipt."" 5. On the aspect of facts, the argument of the learned Advocate-General (Sri Kumaramangalam) may be tersely set

forth, The learned Advocate-General submits that the enquiry in disciplinary jurisdiction, which culminated in this letter of termination of service,

was not in conformity with principles of natural Justice, on certain grounds. The most important of them, are these:

(i) The enquiry throughout proceeded on the basis of the letters written to the bank by certain private individuals, with-out these individuals effering

testimony in person at the enquiry, and subjecting themselves to cross-examination. These individuals or several of them, had admittedly given

subsequent letters to the appellant which he produced with his explanations, retracting their earlier statements. It is strenuously contended that,

even if it be assumed that the subsequent contradictory letters were due to influence exercised by the appellant, as the bank authorities actually did

assume, this is, at the highest, a moral conviction; these letters, therefore, should not have formed the basis of enquiry.

(ii) As the very record of enquiry shows, the investigating officer was not merely present throughout, but he actually participated in the enquiry, and

made interjections likely to influence the officer holding the enquiry, such interjections, or questions put to the appellant by the investigating officer,

are against principles of natural justice.

(iii) Apart from other technical grounds taken, it is at least clear from Rule 40(4) that a second opportunity ought to be given to the employee to

show cause against the penalty proposed to be inflicted principal of Lall case [1945 F.C.R. 103], This was not done, and this also vitiates the

enquiry,

(iv) The learned Advocate-General strenuously contended that the ultimate memorandum terminating the services of the appellant under Rule 14,

the power under the contract, was not a bona fide exercise of that power. It was reailly a camouflage, a mere outward semblance or mark,

concealing the true character of the order, substantially a punishment. Hence, this Court ought to interfere, in exercise of its writ jurisdiction, and

strike down the impugned order.

Per contra, Sri Thiruvenkatachari for the bank taken us through the record, in a very claborate manner. He has sought to convince us that, even at

the outest, the charges were not those of any grave misdemeanour, or of transactions which might otherwise amount to offences, such as

misfeasance or malfeasance. or acts perpetrated with a dishonest intention. Naturally enough, the back, in its own interest, had imposed a code of

conduct or etiquette, upon its officers. The good name and the repute of the bank depended very much on the strict observance of there rules. If a

responsible officer, like the head cashier, had private dealings, particularly borrowings. with constituents of the bank, if he himself was permitted to

issue post dated cheques. which could not be possibly honoured, because of lack of funds in his current account, then the interests of the bank

would be gravely jeopardised. The substance of the charges was that the appellant had indulged in conduct subversive of the interests of the bank

and of its high repute with the public. According to Sri Thiruvenkatachari, there was really no failure to observe the principles of natural justice. He

has analysed the record, and made comments on portions thereof, to show that the bank acted fairly and judiciously throughout. The bank was cautious to investigate whether the complainants were biased against the appellant; because of the appellant''s strict performance of duties. The

subsequent letters obtained by the appellant from the same individuals, wore patently due to his own efforts to influence them. The earlier letters

had been received before the formulation of the charges, and there was no prejudice occasioned by the use of those letters. There was no

impropriety at the enquiry, and the ultimate conclusion was reasonable, and supported by the probabilities. In any event, the bank authorities finally

chose the method, not of punishing the appellant for his misconduct, of which they were convinced; but of terminating his services under the power

of contract, as the more merciful and humane alternative, considering the past blameless record. Such a termination of services under a power

derived from contract, assuming that it is wrongful, cannot possibly be canvassed in writ jurisdiction. The appellant must be referred to his remedy

under the common law, in an action for damages.

6. Certain aspects, which seem to have weighed heavily during arguments before the learned Judge (Veeraswami, J.). are now conceded as almost

soademic, and of no great significance. For instance, the learned Judge was much exercised to discuss the issue whether the State Bank of India

was a ""public authority"" to whom writs could issue under Article 226. After setting forth a passage from 30 Halsbury''s Law of England, 3rd Edn.;

p. 682, the learned Judge analysed the dicto to Attorney-General v. Company of Proprietors of Margate Pier and Harbour (1900) 1 Ch. 749,

But, as he pointed out, that decision was rendered at a time when a rather narrow view was adopted regarding the kind of undertaking that could

be termed a ""public authority,"" as there were certain Acts of Parliaments under which even commercial concerns had come into existence, and the

concept of governmental function was then relatively restricted. The case-law itself shows a marked subsequent development. To-day, it is a

common place that a democratic welfare State may undertake what would be regarded in the nineteenth century as functions purely limited to

private industrial enterprises; our own amendment of Article 19(6)-Article 10(6)(ii) -investing the State, or a corporation award or controlled by

the State. with a power to embark on such enterprises, mirrors the changing concept. The learned Judge than referred to Firestone Ture and

Rubber Company, Ltd. v. Singapore Harbour Board 1953 A.C. 452, as illustrating ""the departure from the old view."" He has also referred to

Griffiths v. Smith 1941 A.O. 170 and Narayanaswami Watdu v. Krishnamurthi 1958 I L.L.J. 867, which dealt with the Life Insurance

Corporation of India. We might further cits Dr. T.C.M. Pillay v. Indian Institute of Technology 1964 II L.L.J. 811, and refer to the catena of

decisions at the Bar, wherein universities and various State aided corporations have received legal recognition as "" public authorities."" Actually,

during the arguments, it clearly perceived that this aspect of the matter was largely academic. The development of the case-law in India, particularly

of the Supreme Court, leaven us in on doubt that such "" authoties,"" as the State Bank of India, which derive their existence from statute, are largely

Government controlled, and in which the State has a considerable proprietary interest, are ""public authorities. We think it sufficient to point eat that

there are at least two decisions of High Courts, namely, Baleshwar Prasad v. State Bank AIR 1858 Pat. 418 and Suprasad Mukherjee v. State

Bank of India 1961 II L.L.J. 786 in which the propobitloa, with reference to the State Bank of India, was not even doubled.

7. In the light of these facts, we do not think that it is necessary to farther discuss the criteria for this test argned by Sri M.K. Nambiar before the

learned Judge (Veeraswami, J.), namely, whether the organisation derives its existence from statuts, whether it is incorporated by a special statute,

whether it is controlled by Government, and its functions are, partly or wholly, the functions of Government. Sri Thiravenkatachari, no doubt.

contends that even commercial organisations, with profit-sharing and the earning of profits as essential components of their objectives, and which

thus belong to the private sector, if we may so term it, may owe their existence to statutes; certainly, several did so in the United Kingdom. But the

point is not this. The point is that, as far as the State Bank of India is concerned, as the learned Judge (Veeraswami, J.) has conclusively shows, by

an elaborate analysis of the State Bank of India Act, 1955, which need not be recespitulated here, the bank is largely State-owned, several of its

functions are controlled by Government, it has to obey the directives of the Government in vital respects, and even apart from its assets; its bodies

of management are partly governmental in composities. Under these circumstances, there can be no doubt that the State Bank of India is a "" public authority ""; indisputably. it is an ""authority"" within the scope if Article 226 of the Constitution.

8. As regards the related question concerning the amplitude of the power of High Courts under Article 220, we are in the entire agreement with the

learned Judge, Yeeraswami, J, that this cannot be merely disposed of as the aggregate of the prerogative writs of the United Kingdom. The terms

are more comprehensive, the amplitude is wider, and the clear internment of Article 226 is act merely to write the English prerogative writs into the

Constitution of India. No further discussion of this aspect, however, appears to be necessary, except to (sic) the cantionary note that, in deciding

the question of jurisdiction, the English cases though indisputably of great value and assistance, may not fee literally followed, as extracting the

content of our own power:

9. We shall deal later with the very vital question, which, in certain sense, is the of crux of this case, namely, whether the actual order terminating

the services of the appellant, that we have set forth earlier, is what it claims to be, that la, an exercise of the power under a contract to dispense

with the service of the employee, or is a punishment. For, Sri Thiruvenkatachari is enable to dispute that, if the of order is, in care and sub-stance,

a punishment in disciplinary Jurisdiction, then the respondent-bank would have to act quasi-Judicially; It must certainly observe the norms of natural

Justice. If it has not done so, the order is liable to be struck down, even if the state Bank of India Rules are not statutory in character. For, as

pointed out in the Full Bench decision in Nagarathnammal v. Ibrahim Sahib (1955) 2 M.L.J. 49 fey Balakrishna Ayyar, J., a statutory body, like

the Board of Revenue in that case, which has framed rules for its guidance, which are administrative and not of the character of delegated

legislation, nevertheless, cannot choose to infringe such rules in as arbitrary manner. The learned Judge stated:

In other words, the Board cannot Ignore the existing rule fey treating the order made in that particular case as an amendment of the rate. That the

Government or the Board has the power to amend the rate should make no difference, both are bound to dispose of the matters that come up

before them in accordance with the rules at the time in force on the subject.

This aspect, again, therefore, need not receive any elaborate treatment, though it has been dealt with by Veeraswami, J, at some length.

10. Equally, the learned Advocate-General does not dispute that, if the order terminates the employment by virtue of the contract, the matter is at

an end, as far as writ Jurisdiction is concerned. For, as we shall presently show, there is a plethora of authorities upon the dictum that a breach of

contract by an employer, even if the employer be a statutory body, can give rise only to a claim in damages and cannot be canvassed in writ

jurisdiction. Some arguments appear to have been pressed before Veeraswami, J., that rate M, which is explicitly to the effect that the bank can

terminate this employment, under the contract, does not justify the actual termination by the tendering of two months salary in lion of notice, thus

reading C1. (1) of the Service Agreement with the rule; but, this was not adverted to before us, nor was the power to terminate under the contract,

seriously disputed.

11. Before proceeding to the main argument; the interpretation of the true character of the final memorandum, and the case-law cited on that

aspect, we may conveniently deal with the question of the resolution of apparent conflict in the cause-law on our scope of interference, in a

situation of this kind. It may be best to condense the argument of Sri Thiruvenkatachari on this aspect; before attempting to resolve the conflict.

According to Sri Thiruvenkatachari, there would appear to have been some misconception; even with regard to the precine scope of the dicta in

Rex v. Electricity Commissioners (1924)1 K.B. 171 . While the passage is the judgment of Atkin, L J., relating to the controlling jurisdiction of the

King''s Bench Division,

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially,

not in excess of their legal authority"" has received wide notice; and is almost a classic formula; equal attention has not been paid, according to him.

to the dicta of Banks L.J.; in the same decision that, "" As statutory bodies were brought into existence exercising legal jurisdiction, so the issue of

the writ came to be extended to such bodies.

In other words, there are several pre-requistes for the exercise of this jurisdiction. even with regard to statututory bodies. There must be a

decision, that decision must relate to the exercise of some function of a legal character, and it must affect some right. Farther, according to learned

Counsel, the scope of this interference in writ jurisdiction in, more or less, defined by the doctrine of ultra vires, Where a particular act or exercise

of power or function exceeds legal authority, infringes some legal restriction, is either incompetent or mala fide or, feeing frank1y quasi-Judicial,

contravenes some norm of natural justice, it may be struck down; but not otherwise. Learned Counsel has stressed the dichotomy in the case-law;

particularly in the United Kingdom; on this particular point, it was also noticed fey Ramachandra Ayyar, C. J. in Dr. T.C.M. Pillay v. Indian

Institute of Technology 1964 I L.L J. 311 (vide supra), in the brief form that Vine case [(1966) 3 All E.R. 939] : 1957 A.C 488 , was not a

straightforward case on the law of master and servant, but an infringement of statute, taking away the very basis of the decisions, while Barber case

(1958) 1 All E.R. 329 , was a mere breach of contract, remediable only in an action for damages. The following incidents in the development of

the case-law, on this aspect, would appear to be of interest and significance.

12. In L.R. Board v. I.E.I. Works AIR 1949 P.C. 129, followed is The Sree Meenakshi Mills Ltd. Vs. The State of Madras and Others, , the

Judicial Committee observed, with reference to the jurisdiction of the Labour Relations Board, as follows (at p 200):

The Jurisdiction of the board . ; . is not invoked by the employee for the enforcement of his contractual rights; those, whatever they may be, he can

assert elsewhere. Bat his reinstatement, which the terms of his contract of employment might not by themselves justify is the means by which labour

practices regarded as unfair are frustrated and the policy of collective bargaining as a road to industrial peace is secured. It is in the light of this new

conception of Industrial relations that the question to be determined by the board must be viewed....

13. But this is true of the law of Industrial relations and disputes alone, and according to learned Counsel, this cannot be invoked elsewhere. It is

obvious that, as far as the law of master and servant is concerned, there cannot be specific performance of a contract of employment, nor can a

continuance of service be constrained. Analogies drawn from the law of Industrial disputes, are apt to be highly misleading. In the judgment of

Lord Morris In Vidyodaya University v. Silwa (1964) 3 All E.R. 885, which is itself an instance of the refusal to interfere, even with respect to a

statutory body, like the University of Ceylon, where it exercises a power derived from a contract of employment, will be found set forth a select

anthology, if we may so term it, with respect, of the dicta on this aspect. Lord Morris himself observed that:

the law is well-settled that, if, where there is an ordinary contractual relationship of master and servant, the master terminates the contract, the

servant cannot obtain an order of certiorari. If the master rightfully ends the contract. there can be no complaint; if the master wrongfully ends the

contract. then the servant can pursue a claim for damages.

The Judgment then quotes Lord Reid in Htdge v. Baldwin (1968) All E.R. 66, to this effect:

There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any

reason or for stone. Bat if he does so in a manner not warranted by the contract. he must pay damages for breach of contract. Se the question in a

pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the

facts emerging at the trial prove breach of contract.

In Vine case [1957 A. C. 488], Viscount Kilmuir, L.C., observed (at p. 500):

This is an entirely different situation from the ordinary master and servant case I there, if the master wrongfully dismisses the servant, either

summarily or by giving insufficient notice, the employment is effectively terminated, albeit la breach of contract. Here, the removal of the plaintiff''s

name from the register being, in law, a quality, he continued to have the right to be treated as a registered book worker with all the benefits Lord

Keith observed la the same judgment (at p. 507);

Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant.

Dismissal might be in breach of coatract and so unlawful, but could only sound in damages.

14. Apart from this case, the leading decisions on this side of the line are Prancis v. Municipal Councillors Etc. (1962) 8 All E.R. 633; Barber v.

Manchester Hospital Board (1958) 1 All E.R. 322 (vide supra); Vine case 1957 A.C. 488 (vide supra), will have to be distingutable, on its special facts, and in Barber case (1958) 1 All E.R. 322 (vide supra), we have this notable pronouncement of Barry, J. (at p. 881)1

Here, despite the strong statutory favour attaching to the plaintiff''s contract, I have reached the conclusion that la essence it was an ordinary

contract between master and servant and nothing mere.

15. It is indisputable that a statutory body nay employ persons under contract, and that, so long as it is exercising the function or power into

contract, or enforcing an obligation under contract, it is acting purely like a privata individual. This criterion of distinction in well-marked and it

cannot be argued except where the act of the statutory body is in breach of a mandatory obligation imposed by the statute, when a statutory body

terminates an employment under contract that the act is per se liable to be canvassed in writ jurisdiction. It appears to us that this distinction can be

most clearly brought out not in our own words by setting forth two passages, one from Vidyodaya University case (1964) 8 A11 E.R. 866, and

the other from the decision of the Supreme Court in S.R. Tewari Vs. District Board Agra and Another, . That the board of directors of a co-

operative society is not a "" tribunal"" with authority to determine the rights of parties, though the directors may discharge functions entrusted to them

by certain regulations, was held in Lakihmiah v. Sri-perumbudur Taluk Co-operative Marketing Society (1961) 9 M.L.J. 370, The passages of the

two decisions that we have earlier referred to, are as follows:

In a straightforward case where a master employs a servant the latter is not regarded as the holder of an office, and, if the contract is terminated,

there are ordinarily no questions affecting status or involving property rights. It becomes necessary, therefore, to consider whether in the present

case there are any features which suggest a relationship other than that of master and servant. It was submitted on behalf of the respondent first

that, if someone has the power to determine what the right! of an individual are to be, then a duty to act judicially arises limply from the nature of

the power, and secondly, that where the power is a power to dismiss from an office (and it was contended that the respondent could be said to be

the holder of as office) and to dismiss not at discretion but by reason of misconduct, then there is a duty to act judicially. In their lordships'' opinion

the first of these submissions is too wide and cannot be accepted. The second call for an examination of the position which the respondent

occupied, having regard to the facts concerning his appointment and having regard to the provisions of the Act of 1958. It was contended that the

respondent had certain statutory rights and that certiorari could be granted in order to enforce them and in order to ensure obedience to the

provisions of the Act."" (1664) 3 All E.R. 865

The other passage is to the following effect:

...Under the common law, the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to

employ. But this rule is subject to certain well-recognized exceptions. It is open to the Courts in as appropriate case to declare that a public

servant who is dismissed from service la contravention of Article 311 continues to remain in service, even though by so doing the State is in effect

forced to continue to employ the servant whom it does not desire to employ. Similarly, under the industrial law, jurisdiction of the labour and

industrial tribunals to compel the employer to employ a worker, whom he does not desire to employ, la recognised. The Courts are also invested

with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in bread of a mandatory obligation impend by

statute, even if by making the declaration the body is compelled to do something which it does not desire to do. S.R. Tewari Vs. District Board

Agra and Another, .

16. On this aspect, therefore; it does appear that the dichotomy is itself referable to the question whether a statutory body, bring bound to act

quail-Judicially. Infringes any norm or acts incompetently, or la excess of a power under a binding law; is brief, the doctrine of ultra vires. But

where the statutory body acts in the same way as any private individual may do, by terminating the employment under contract, by borrowing

money or lending money, or as a tenant or a landlord of premises, the ordinary rate would be that the common law remedial available to the

aggrieved party would exclude writ jurisdiction, precisely as in the case of a private individual. Sri Kumaramangalam appeared, at one stage of the

arguments, to be somewhat widening the scope of this proposition by this reference to the following passage in ""Administrative Law"" by J.F.

Garner (1968 Edition) at pp. 90 to 98, The passage runs as follows:

Apart from express statutory provisions, review by the Courts of a decision of an administrative agency has always been based, in our legal

system, on all allegation that the agency has exceeded its powers, has acted ultra vires. This is fundamentally a simple doctrine, based on the

common law. All governmental power must be recognized by the law especially where that power is exercised in some manner which which

adversely the property or the liberty of a subject, and that recognition is given only to power that emanates from a single source, the Queen in

Parliament. Breach of ''natural juatice'' (as understood by the common law and to be hereafter explained), lack of jurisdiction, faulty procedure,

bad faith, have all been put forward in certain context as justification for judicial Intervention, but all of these, in so far as they may be recognized at

all by the Courts, are really but specialized applications of the ultra vires doctrine. Parliament did not and could not have intended to confer power

that could be exercised in such a manner as to (sic) ''natural justice.'' The various aspects of ultra vires can nevertheless be conveniently considered

in this manner, if for no other reason than that this traditional treatment enables the principles established in the many decisions of the Courts to be

considered in an orderly fashion. It is in this field of the extent of governmental powers that the Courts have a traditional and Important pan to play

in the control of administrative agencies.

17. Their task is to contain administrative activity within the bounds of delegated power: to apply to administrative action the teat of legality''.

18. It must first be appreciated that the decisions of an administrative agency in respect of which judicial review is sought may themselves be of

variens kinds. Thus, a local authority, a Minister or an Independent public corporation, may have made a formal order, such as compulsory

purchase order, have granted or refused a licence or certificate, or imposed condition in a licence, or they may have decided to expand public

money on some project to which exception is taken. The decision questioned may be one of a large number of petty administrative acts, from the

writing of a letter or the publication of minutes containing allegedly defamatory material to the breach of an alleged contract involving high

Government policy. Again, the act is question may be administrative in nature, or it may be quasi-judicial,'' It may be a judicial decision of an administrative tribunal such as a furnished houses rent tribunal, or a legislative act such KB the making of a bylaw by a local authority or a statutory

corporation, or the giving of general or particular instructions to local authorities in ministerial circulars or memoranda, which may themselves be a

form of delegated or sub-delegated legislation.

19. The principles according to which the Courts are prepared to apply the ultra vires dectrine and review the exercise of the administrative,

judicial or legislative acts of fen administrative agency are as follows:

(a) Breach of the principles of natural justice,''

(b) Excess of power (or '' substantial ultra vires).

(c) Errors of procedure.

(d) Palpable errors of law.

(e) Failure to perform a duty.

(f) Bid faith or abuse of power.

20. But, in our view. this passage is not in any sense radically different from the submissions of Sri Thiruvenkatachari for the respondent-bank. In

other words, the scope of the doctrine of ultra vires is unambiguous, and the dichotomy in the case-law la perfectly explicable. Therefore, if the

order in the present case is to be construed as a bona fide exercise of the power derived from contract to terminate the employment, it cannot be

struck down in writ jurisdiction. It is not as if the appellant is without his remedles. He has his remedies in common law, for damages for wrongful

dismissal, and, in a given case, such damages may Indeed be considerable. He has a perfect right to contend that, if the bank proposes to exercise

its power under the contract to terminate his employment, simpliciter, it should not couple this act with observations on the alleged misconduct of

the appellant, which is itself the conclusion of an enquiry, allegedly vitiated by a failure to observe the principles of natural justice. In other words,

the bank may certainly dispense with the services of its employee, under a contract, it may not even be constrained to give him a certificate or a

testimenial of unblemished conduct. But it cannot virtually make averments against the conduct of the employee, when dispensing with his service

under contract. If it does so, that may amount to wrongful dismissal or a breach of contract and be actionable under common law. Unless the

Interpretation is sustained that the final order is not this, but merely a mask for a punishment imposed in disciplinary jurisdiction; the refusal of the

learned Judge (Veeraawami, J.) to interfere will have to be supported by us, as prefectly justified.

21. It is in this context that the learned Advocate General has heavily relied on the following decisions, particularly of the Supreme Court; Assam

Oil Company v. its workmen 1960 I L.L.J. 687; S.R. Tewari Vs. District Board Agra and Another, ; Dr. Akshaibar Lal and Others Vs. The

Vice-chancellor, Banaras Hindu University and Others, ; certain observations in Board of High School and Intermediate Education, U.P.,

Allahabad Vs. Ghanshyam Das Gupta and Others, ; Calcutta Dock Labour Board Vs. Jaffar Imam and Others, ; Mafatlal Naraindas Barot Vs.

Divisional Controller, State Transport Corporation and Another, ; and Union of India Vs. T.L. Dakshinamurthy, , a decision to which one of as

was a party. Certain of these cases are of great importance upon this question of interpretation of the sub-stance of the order, and, hence we think

it la essential to notice them in a little more detail.

22. The meal helpful case for the appellant would appear to be Assam Oil Company v. its workmen 1960 I L.L J. 687 (vide supra). In that case,

the services of a certain Miss Soot* were dispensed with, after it had been pointed out to her that her faults had not been corrected, and that her

performance during her service was not up to the standard required. Apart from the question whether Miss Soott was a "" workman "" u/s 2(s) of

the Industrial Disputes Act, 1947, the power under contract was relied on. Upon the question whether the order of termination was really under

the contract, or was merely a semblance for a punishment for misconduct, Gajendragadkar, J. (as he then was), observed as follows (at p 590);

...If the discharge has been ordered by the employer in bona fide exercise of his power, then the industrial tribunal may net Interfere with it; but; the

words used in the order of discharge and the form which it may have taken are net conclusive in the matter and the Industrial tribunal would be

entitled to go behind the words and the form and decide whether the discharge is a discharge simplicite'' or not; If it appears that the purported

exercise of the power to terminate the services of the employee was. in fact, the result of the misconduct alleged against him. then the tribunal will be justified In dealing with the dispute on the bails that despite its appearance to the contrary the order of discharge is, in effect, an order of

dismissal. The exercise of the power in question to be valid must always be bona fide. If the bona fides of the said exercise of power are

successfully challenged, than the is industrial tribunal would be entitled to interfere with the order in question. It is in this context that the industrial

tribunal must consider whether the discharge is mala fide or whether it amounts to victimisation or an unfair labour practice, or is so capricious or

unreasonable as would lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power conferred by the

contract. In some cases the employer may disapprove of the trade union activities of his employee and map purport to discharge his services under

the terms of the contract. In such cases, if it appears that the real reason and motive for discharge is the trade union activities of the employee, that

would be a case where the industrial tribunal can justify hold that the discharge unjustified and has been made mala fide. It may also appear in

some cases that though the order of discharge is cauched is words which do not impute any misconduct to the employee, is sub-stance, it is based

on misconduct of which according to the employer, the employee has been guilty; and that would make the impugned discharge a punitive

dismissal. in such a case fairplay and justice require that the employee should be given a chance to explain the allegation weighing in the mind of the

employer and that would necessitate a proper enquiry. Whether or not the termination of services in a given case is the result of the bona fide

exercise of the power conferred on the employer by the contract or whether, in substance, it la a punishment for alleged misconduct would always

depend upon the facts and circumstances of each case....

The next case that has to be noted la that to which we have earlier made reference; namely, S.R. Tewari v. District Board, Agra 1864 I L.L.J. 1

(vide supra). Very briefly stated, that was a case in which the Supreme Court declined to interfere, because it was a factual question whether the

order terminating the employment was under contract, or really of the nature of dismissal as punishment, and the question had neither been raised

nor explered in the High Court on proper pleadings. The case proceeds no further than this. After referring to Vine case 1957 A.C. 488 (vide supra), and after holding that the district board had power to determine the employment under contract; their lordships stressed that the true

distinction was whether the order WAS a bona fide exercise of the power under the contract or was merely that in form, and, in reality, was a

punishment of dismissal, They observed (at 9. 8):

...It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order.

The form may be merely to camouflage an order of dismissal for misconduct, and it is always open to the Court before which the order la

challenged to go behind the form and ascertaia the true character of the order. If the Court holds that the order though la the form merely of

determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely

because of the form of the order la giving effect to the rights conferred by statutory rules upon the employee.

23. Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, , is a brief judgment, in which it was held, on

the facts of that case, that the order of termination was bad in law. since it contravened the provisions of Clause (4) of the Regulations, and also the

principles of natural justice. Calcutta Dock labour Board and Ors. v. Jaffar Imam and Ors. 1966 II L.LJ. 112 (vide supra) is of value, as showing

that the relevant statutory provision and the principles of natural justice should have been followed, and a proper enquiry held, since it was

indisputable that the appellant-board, in terminating the employment of lie employees, was exercising authority and power of a quasi-Judicial

character. This decision also estates to the share of Industrial disputes, since the disciplinary proceedings ware initiated under the Calcutta Dook

Workers (Regulation of Employment) Scheme, and the impugned orders were held vitiated by the infirmity, that mere preventive detention had

been equated with conviction for a criminal offence. The decision in Life Issurance Corporation of India v. Sunil Kumar Mukherjee 1964 I L.L.J.

443, again, relates to an invalid termination of contract, pertinent to an Industrial dispute. Board of High School and Intermediate Education, U.P.,

Allahabad Vs. Ghanshyam Das Gupta and Others, , is authority for the view that if a statutory body has power to do an not, which will prejudicially affect the subject, then, although there are not two parties, apart from the authority, and the contest is between the authority and the

subject, the final determination of the authority will yet be a quasi-judicial act, provided, the authority is required to not judicially, This decision

does not apply to the facts of the present controversy, for It is indisputable that, if the determination be for misconduct, in substance and verify, the

matter is at an and. The authority was bound to act quasi-judicially and in conformity with the rules framed by itself for observance in such matters

of disciplinary jurisdiction; if the principles of natural justice ware infringed, the writ should issue.

24. Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others, , la of considerable interest, for it shows how

the differentiating factor that we have been discussing, comes into play on given facts. That was a case in which the university adopted a special

procedure, provided for in disciplinary jurisdiction, under statute 30. The University Act (Banaras Hindu University Act) expressly made the

Ordinance subject to the statutes, so that, in the one of conflict, the Ordinances had to recede, and could not prevail. In essence, what their

lordships held was that, after having resorted to the powers under the statute, and followed a special procedure, the university could not abandon

its own action, and terminate the services under the general power of the Ordinance. This itself shows that where, in a particular case, it is the

power of contract simpliciter which is being exercised, the remedy may lie elsewhere, Finally, we may note that Union of India v. Dakshinamurthi

1969 II L.L.J. 96 (vide sura) was a decision relating to the Railway Establishment Code and its rules. On the facts of that case, and, more

specially, in the context of the final withholding of the salary under orders of suspension, this Court held that a particular order of termination of

service, though in form it was such, was really a punishment. Actually, the punishment was inflicted in contravention of Article 311 of the

Constitution, and the Court interfered. Admittedly, Article 311 deep not apply to the present case.

25. In our view, an analysis of the order, in the setting in which it was made, and on a fair Interpretation of its purport and tenor, can lead only to

the conclusion that it is really what it or facie claims to be, an Invocation of the power derived from contract to terminate the services of the appellant. As the learned Judge (Veeraswami, J) rightly observed, if we may say so with respect,. the occasion for the exercise of the power la one

thing, and the basis for the act of termination la quite another. Certainly, without the prior facts of the charges and the enquiry, and the ultimate

conviction of the relevant authority that the charges had been established, the act of termination under the contract is not explicable. But, in our

view; the motive which led to the exercise of a function, has to be carefully distinguished from the nature of the act. It is very important to note, as

the learned Judge has stressed, that the local board, in exercising this power of termination, does not state that it agrees with the findings of the

enquiry officer. The learned Advocate-General has strenuously contended that the basis of the order la the enquiry and the finding of misconduct.

Therefore, according to him; though the order purports to terminate the services under contract, it is really a punishment. We think that this line of

reasoning conceals a fallacy. Any employer, even a statutory body, may initiate a proceeding; hold an enquiry, and come to certain con-elusions.

But, at that stage, it may be faced with the choice of two alternatives. It may choose to punish the employee on a finding of misconduct, or it may

choose, for what may seem to the authority to be valid reasons to terminate the employment under contract, instead.

26. We are unable to see how this choice, of one of two alternatives, can be possibly denied. If the organisation chooses the alternative of

terminating the employment under contract, how can it be contended that it meant something else, unless. indeed; there is some mala fide exercise

of power ? We do not think that an argument is sustainable that, wherever the termination, under contract, is moticated by some prior enquiry or

some investigation, it is not bona fide, This will lead to the aboard consequence that the power to terminate an employment under contract, is taken

away, the moment the employer thinks that the employee is undesirable. From all that we can gather from the record, it may be perfectly true that

the employer-organisation thought of both the alternatives, and decided on the alternative of terminating the employment under the power of

contract, instead of imposing a punishment, as mere merciful, and justified by the prior unblemished record. It may even be that on legal advice

obtained by the bank authorities, the alternative of exercising the power under the contract was chosen. We have nothing to do with the motive ;

we have only to see whether the order is what it claims to be, or is merely a semblance, marking some ulterior objective.

27. We cannot find anything to support this either in the documents of the record, or in the manner in which the appellant was dealt with, as

regards his pay and allowances. We must, therefore, conclude that the order is the result of the exercise of power under the contract, as it purports

to be. Certainly, it may be a wrongful termination, and the appellant is not without his remedies in common law, if that be so.

28. In this view of the matter, we do not propose to focus much attention upon other decisions cited at the bar, or the subsidiary issues. But, on the

aspect of the facts relating to the enquiry, we must agree with the learned Advocate-General that, however careful and bona fide, the conduct of

the respondent-bank might have been, the enquiry itself has infringed certain principles of natural justice. The bank might have been perfectly

reasonable in arriving at the moral conviction that the subsequent letters obtained by the appellant from the same complainants, might have been

induced. Bat natural justice did require that, so long as there was a possibility that the retracted statements may be the truth, these individuals

should have been examined at the enquiry, and the appellant furnished as opportunity for cross-examining them, Again, the same remarks would

apply to the active participation of the investigating officer at the enquiry, particularly in the form of interjections and of questioning of the appellant,

which might be calculated to prejudice the tribunal, in this case the secretary and treasurer. Even more indisputably, the rules were not followed,

when the appellant was not asked to show cause against the proponed punishment, by giving a second opportunity. Actually, this probabilities our

interpretation that, in final outcome, the authorities chose, instead, not to dismiss the appellant for misconduct, but to terminate his services under

the power derived from contract.

29. We must, therefore, hold that the decision of Veeraswami, J., must be confirmed, and that the writ appeal should be dismissed. The appellant

may be able to contend, if he chooses to bring in a salt for damages now, that he has been litigating bona fide in the Courts throughout, and that this

saves limitation in respect of such a suit; we are not giving our opinion upon such a plea now. The parties will bear their own costs.

