

(1971) 02 CAL CK 0023
In the Calcutta High Court
Case No : Second Appeal No. 558 of 1966

The Asansol Electric Supply Co. and Others APPELLANT
Vs
Chunnilal Daw RESPONDENT

Date of Decision : 24-02-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Companies Act, 1956 — Section 172
Specific Relief Act, 1877 — Section 21

Citation : AIR 1972 Cal 19 : (1972) 1 CALLT 289

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : S.D. Banerjee, Dwijendra Nath Das and Nirmal Kumar Ganguly, for the Appellant; Mrigen Sen and Provat Kumar Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—This is an appeal by a public company, the Asansol Electric Supply Company Ltd. and its four Directors against a judgment and decree of affirmance. The plaintiff Chunilal Das, as an employee of the company instituted a suit inter alia for a declaration that certain resolutions purported to have been passed by the Board of Directors of the Company as also by its shareholders were illegal, void, inoperative and not binding on the plaintiff and also for some other reliefs. The plaintiff's case in short is that he was firstly appointed a Manager of the Company which appointment was confirmed by a special resolution passed at its General Meeting held on September 25, 1957 of the shareholders of the company, the plaintiff's designation was however changed from Manager to Supervisor, and, the remuneration fixed was Rs. 750/- per month with effect from January, 1958 and of annual increment of Rupees 10/- and dearness allowance of Rs. 180/-per month unless otherwise determined by the Board, It may be mentioned here that the plaintiff is a relative of the Defendant No, 2, the Managing Director of the Company and accordingly shareholders approval was considered necessary in view of Section 314 of the

Companies Act, 1956. By another resolution dated April 24, 1963 passed by the Board of Directors of the Company, the post of Supervisor was abolished with effect from May 1, 1963 and the plaintiff was appointed Store-in-Charge on the same pay and allowances. While he was engaged in the said office, a notice was issued on July 5, 1963 by the Board for a proposed extra ordinary general meeting of the company to be held on July 29, 1963 to consider and if thought fit to pass the resolution appended thereto, with or without modification, as a special resolution, also in view of Section 314 of the Act. In the said proposed resolution it was stated that the plaintiff was to be appointed a Store-in-Charge with effect from May 1, 1963 at a basic salary of Rs. 810/- per month. It appears that on that date a meeting of the shareholders was held when the plaintiff objected to the defendant No. 2 being in the chair which objection was overruled. The resolution which was notified to be proposed at the meeting by the notice of July 5, 1963 was neither placed nor moved and accordingly not passed at the said meeting. On the contrary a resolution was passed to the effect that the plaintiff was not to be appointed Store-in-Charge with effect from May 1, 1963 and further that the plaintiff had ceased to hold office as a Store-in-Charge with effect from the said date. On the same day, the defendant No. 2 informed the plaintiff by a letter that the plaintiff's service had been terminated with effect from May 1, 1963.

2. The plaintiff on the above allegations instituted the suit for declaration that the resolution of the Board dated April 24, 1963 as also the resolution of the General Meeting of July 29, 1963 were void, invalid, inoperative and not binding on the plaintiff, and, that further the service of the plaintiff as a Supervisor of the company had been continuing and the plaintiff was entitled to arrears of salary and allowances on account thereof. There was a claim for Rs. 3,000/- as damages for mental pain and agony as also loss of prestige in public estimation suffered by the plaintiff. The plaintiff was refused access to the company by the defendant and accordingly he instituted this suit for the aforesaid reliefs and for permanent injunction restraining the defendants from interfering with the plaintiff in the discharge of his duties under his service with the company.

3. The suit was contested by the defendants who filed separate written statements denying the claims made in the plaint. The common defence as it appears from the written statement was that the plaintiffs service was lawfully and validly terminated and the resolution passed by the Board as also in the extra ordinary general meeting of the shareholders impugned in the plaint were valid and legal. It was also contended that the suit for enforcement of the personal contract of service was not maintainable and was barred under the provisions of the Specific Relief Act, 1877.

4. On a trial on evidence, the learned Munsif held that the resolution of the Board dated April 24, 1963 was legal and valid but the resolution passed at the extra ordinary general meeting of the shareholders on July 29, 1963 was bad, invalid and of no binding effect. Accordingly, the plaintiff was still in the employment of

the company in the post of a Store-in-Charge and not as Supervisor as claimed and was entitled to the monthly salary and allowances from July, 1963 till the date of the filing of suit on September 30, 1963 which was determined at Rs. 1,168/-, as he was prevented by the defendants from doing the work of the company though the plaintiff had been willing to do his work in his service under the company. The claim for damages was rejected as not pressed. The defendants and their servants were restrained by injunction from interfering with the plaintiff's service in the said post until his service was determined according to law.

5. An appeal was preferred by the defendants and the appellate court also affirmed the judgment and decree of the trial court and dismissed the appeal. The present appeal is against the said decision.

6. Before we proceed to consider the merits of the appeal, it will be proper for an adjudication of the issues involved in the case, to have a clear idea about the resolution and letter impugned in the plaint. The resolution of the shareholders passed at the extra ordinary general meeting of the company on December 25, 1967 is to the following effect:--

"Resolved further that the designation of Sri Chuni Lal Daw be changed from Manager to Supervisor with immediate effect and that his remuneration be Rs. 750/- per month with effect from 1st January 1958 with an annual increment of Rs. 10/- and a dearness allowance of Rs. 180/- per month until otherwise determined by the Board of Directors". (Ex. 2).

7. The next resolution of the Board of Directors held on April 24, 1963 as communicated to the plaintiff by the letter of the company is to the following effect.

30th April, 1963.

Sri Chunilal Daw, Asansol.

Dear Sir,

We are appending below an extract of the resolution passed at the Board's meeting held on 24-4-1963 which will speak for itself.

"Regarding item No. 2 -- it is resolved that the post of Supervisor be abolished from 1-5-1963 and Sri Chunilal Das be appointed as Store-in-Charge on the same pay and Dearness Allowance from 1-5-1963. He will have to look after the Stores issue and receipts of materials, outdoor works, such as service connections, maintenance works etc, including store accounts".

Hence, you are hereby directed to take charge of the above on and from 1-5-1963.

Yours faithfully,

Ex. 2/h. For The Asansol Electric Supply Co. Ltd. Sd/- Sanatan Daw, Managing

Director.

8. The next document is a notice of July 5, 1963 and the extracts from the said notice are as follows:

Notice is hereby given that an extra ordinary general meeting of the members of the company will be held on Monday the 29th day of July 1963 at the registered office of the company at Asansol at 3 P. M. to consider and if thought fit to pass the following resolution with or without modification as special resolution as required u/s 314 of the Companies Act, 1956.

"Resolved that Sri Chunilal Daw be appointed as Store-in-Charge on a basic pay of Rs. 810/- and a Dearness Allowance of Rs. 180/- per month with effect from 1-5-1963, along with other usual amenities i.e. Provident fund, Bonus, Attendance Bonus, Gratuities Travelling Allowance etc. as are granted by the company to other employees. It is also resolved that members of the company consent to Sri Chunilal Daw, who is a relative of Sri Sanatan Daw, the Managing Director of the company, holding and continuing to hold his present office as Store-in-Charge of the company with effect from 1-5-1963"

Explanatory Notes.

"Sri Chunilal Daw was appointed as Manager from 1-1-1951 in the eighteenth ordinary general meeting held on 28-9-1951. Consent was given in the extra ordinary general meeting held on 11-4-1956. His designation from Manager to supervisor was changed in the extra ordinary general meeting held on 25-12-1957. His post of Supervisor was abolished from 1-5-1963 and he was appointed as store-in-charge from 1-5-1963 in the Directors' meeting held on 24-4-1963. Sri Chunilal Daw being a brother of the Managing Director, Sri Sanatan Daw, the above said resolution requires the consent of the company to be accorded by a Special Resolution. Hence the proper resolution is sought to be passed as a Special Resolution of the company."

Asansol.

Dated the 5th July 1963.

By order of the Board, Ex. 1/f For the Asansol Electric

Supply Co. Ltd., Sd/- Sanatan Daw, Managing Director.

9. The minutes of the proceeding of the extra ordinary general meeting held on 29-7-1963 are to the following effect:--

Sri Joy Deb Daw proposes the name of Sri Sanatan Daw as Chairman, Sri Bijoy Daw seconded the proposal.

Sri Sanatan Daw was voted to the Chair.

The notice convening the meeting was read.

Requisite quorum was present.

Sri Bijoy Daw proposes the following modified resolution to be passed as special resolution.

Resolved that the post of supervisor be abolished from 1-5-1963. Further resolved that Sri Chunilal Daw be not appointed as Store-in-Charge with effect from 1-5-1963. It is also resolved that Sri Chunilal Daw ceases to hold and continue to hold his present office as store-in-charge of the company with effect from 1-5-1963.

Sri Aioy Kumar Daw seconded the proposal of Sri Bijay Daw.

Sri Chunilal Daw places on record that by virtue of the notice dated 23-7-1963 given by Sri S.C. Deb, Solicitor to the Company, Sri Sanatan Daw, Ex-Managing Director of the company cannot preside over today's Extra Ordinary General Meeting.

Further to place on record that this extra ordinary general meeting cannot be held which is illegal.

Chairman does not accept the contention of Sri Chunilal Daw and proceeds with the meeting and holds the meeting to be legal.

The modified resolution of Sri Bijoy Daw was passed as Special Resolution.

With a vote of thanks to the Chair the meeting terminated. Ext. 2/j.

10. The last document which is a letter dt. July 29, 1963 by the company to the plaintiff is as follows: No. 396/64.

Asansol 29th July 1963.

Sri Chunnilal Daw. Asansol.

Dear Sir,

As your appointment as store-In-charge has not been passed in the extra ordinary general meeting held on 29-7-1963, your service has been terminated with effect from 1-5-1963.

You are therefore informed to have your dues on 6-8-1963.

Ext. 2/i. Your faithfully, for The Asansol Electric Supply Co. Ltd.

Sd/- . Sanatan Daw. Managing Director.

11. Mr, Sankar Das Banerjee, assisted by Mr. D. N. Das, the learned counsel for the defendants appellants has contended firstly that suit as framed was not maintainable. According to him the suit was really one for wrongful dismissal for which the only remedy of the plaintiff was for damages as would be established in a court of law. There cannot be a suit for enforcement of a personal contract of service either by the master or by the servant and the court will not compel a

man to continue to employ another man in service of a personal nature nor compel one to serve another. In support he also referred to Section 21(b) of the Specific Relief Act, 1877 (Section 14(1)(b) of the Specific Relief Act, 1963). Mr. Banerjee further contended that a suit which prays for a declaration that the plaintiff is still in the service of the defendant employer is also not contemplated u/s 42 (new 34) of the Act. In short Mr. Banerjee's contention is that assuming the impugned resolution or letter terminating the service is bad in law, it is none-the-less a wrongful termination of service and the court under general law cannot direct the reinstatement nor make a declaration that the plaintiff continues to be in service of the company.

12. Mr. Mrigendra Mohan Sen, assisted by Shri Provat Kumar Mukherjee the learned counsel for the plaintiff respondent contended that the suit was maintainable as a suit for declaration that the impugned resolution was bad, invalid, ultra vires and inoperative and if it is found to be so, his client would be entitled to ancillary reliefs which flow from such declaration. The plaintiffs case is not one of wrongful dismissal but of a declaration that the resolution passed by the shareholders was void so that in law there has been not a termination of service at all. As the resolutions in absence of compliance of the statutory requirement which was mandatory were invalid, illegal, ultra vires and so void, such, resolutions did not exist in the eye of law and accordingly, the plaintiff was entitled to the declaration that the impugned resolution and also to the additional declaration that he continued to be in service and to other ancillary reliefs.

13. We shall now examine the respective contentions of the parties and consider the various rulings cited at the bar. The relationship between master and servant is often a matter of contract and if such contract is wrongfully terminated, the remedy of the aggrieved party lies in an action for damages and the court will not grant a declaration that a contract of service still subsists. Such declaration will amount to an order for specific performance of personal service which is practically forbidden in law. This will appear from Section 21, Clause (b) of the Specific Relief Act, 1877 (new Section 14, Clause (b)) which is in following terms.

"Section 21. The following contracts cannot be specifically enforced :--

(a)

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;"

In S.B. Dutt Vs. University of Delhi, , the Supreme Court was considering the case of an award which held that a Professor of an University had been dismissed wrongfully and mala fide, that the dismissal thus had no effect on his status and that he still continued to be a professor of the University. It was held that the award directed specific performance of contract of personal service, and as such a legal proposition is clearly erroneous in view of Section 21 (b) of the Specific

Relief Act, 1877.

14. In the case of *Vine v. National Dock Labour Board* (1956) 3 All ER 939 it was held, in a case where the plaintiff's employment as a registered Dock "Worker employed in the reserve pool by National Dock Labour Board was terminated by a disciplinary committee of the local board, that the local board, under the statutory scheme set up under the Dock Workers Regulation of Employment Order, 1947 had no power to dele-Rate its functions to the disciplinary committee and that the order of dismissal accordingly was a nullity. It was held in such a case that the plaintiff was entitled to a declaration that his name was never validly removed from the register as he would otherwise be disabled to work as dock worker and he continued to be an employee of the National Board. It was observed by Viscount Kilmuir, L. C., as follows:--

"This is an entirely different situation from the ordinary master and servant case. There, if the master wrongfully dismisses the servant, either summarily or by giving any insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the register being, in law, a nullity he continued to have the right to be treated as registered dock worker with all benefits which, by statute, that status conferred on him. It is, therefore, right that, with the background of this scheme, the court should declare his rights." It was also observed by Lord Keith of Avonholm that:

"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 contract and so unlawful but it could only sound in damages."

15. As enunciated in the above case the position will however be different when a statute intervenes in the relationship of master and servant and the employee is given a statutory status. If there is a violation of the provisions of the statute in terminating the service of such an employee, he will be eligible for a declaration that the order terminating the service is a nullity and that he continues to be in service.

16. In *Barbar v. Manchester Regional Hospital Board* (1958) 1 All ER 322 the Hospital Board determined the plaintiff's employment who made an appeal under Clause 16 of the terms "and conditions of service of hospital medical staff which had a statutory force. It was maintained on the part of the Minister that no appeal lay to him and no decision was reached by the Minister required under Clause 16. The plaintiff claimed that his service was never validly determined. It was held that the plaintiff's contract with the board was between master and servant, the termination of which could not be nullity and the plaintiff was not, therefore, entitled to a declaration that his employment had never been validly determined but he was entitled to recover damages for breach of the contract A declaration was also granted as against the Minister that he acted in breach of statutory duty required under Clause 16 of the terms and conditions of service.

This case was not equated to the case of (1956) 3 All ER 939 (supra). Here, the Court was of the opinion that despite the strong statutory flavour attaching to the plaintiff's contract, it was in essence an ordinary contract between master and servant and nothing more.

17. In *Francis v. Municipal Councillors of Kuala Lumpur* (1962) 3 All ER 633 the plaintiff was dismissed by the President but there was some irregularity and the dismissal was technically a wrongful dismissal. The plaintiff asked for a declaration that the termination of his employment was wrongful and he had the right to continue in the employment of the respondents and alternatively he claimed all damages for dismissal. It was observed by the Privy Council as follows:--

".....when there has been a purported termination of a contract of service a declaration to the effect that the contract of service still subsists will rarely be made. This is a consequence of the general principle of law that the courts will not grant specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will be normally in the discretion of the court." In that case it was found that there was no circumstance which made it just or proper to make such a declaration.

18. In *Vidyadaya University of Ceylon v. Silva* (1964) 3 All ER 865 it was held by the Privy Council again that although the University was established and regulated by statute, that did not involve that contracts of employment made with teachers and subject to Section 18 (e) other than ordinary contracts between master and servant. In this case the respondent was not shown to have any other status than that of a servant and procedure by certiorari was not available where a master summarily terminated a servant's employment.

19. In the case of the *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, after a review of the cases on the subject the Supreme Court observed:--

".....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 declaration 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 a statute."

20. It was held in that case that the order of termination made in the breach of a service regulations would be contrary to such terms and conditions, but would not be in breach of any statutory obligation, as was the position in the case of *Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others*, . In the *Warehousing Corporation* case it was held that a breach had been committed by the appellant Corporation of regulation 16 (3) when passing the order of dismissal inasmuch as the procedure indicated therein had not been followed.

The Act does not guarantee any statutory status to the respondent employee, nor did it impose any obligation on the appellant in such matters. Further there was no dispute that an authority who could pass an order of dismissal had passed the order. Accordingly the order was held to be merely wrongful making in consequence the Corporation liable for damages but such order could not be held to be one which had not terminated the service however wrongfully or which entitled the employee to ignore it and ask for being treated as still in service.

21. Mr. Sen, in support of his contention about the maintainability of the suit for violation of mandatory provisions of law relied on the Bench decision in *Ramkissendas Dhanuka v. Satyacharan Law* (1946) 50 Cal WN 310 in which the Court was concerned with the purported resolution terminating employment of the Managing Agents. As such action was taken in violation of the provisions of the Articles of Association of the Company, though not those of 87B of the Indian Companies Act, 1913 as amended in 1936, it was held that the resolution was ultra vires. The Bench affirmed the judgment of McNair, J. who granted a declaration that the impugned resolution was void, inoperative and of no effect and also an injunction restraining the defendants from interfering with the management of the plaintiff company by its Managing Agents. The decision of this Court on this issue was affirmed on appeal by the Privy Council in AIR 1950 81 (Privy Council) and it was observed that the decree merely prevented dismissal or termination of the appointment of the Managing Agents and had not the effect of enforcing a contract of personal service.

22. Mr. Banerjee sought to distinguish this case pointing out that the said suit was by and on behalf of the shareholders of the plaintiff company while the managing agents were not even a party to the proceeding. He further contended that the present suit was not by and on behalf of the shareholders of the defendant company and an employee should not be granted a declaration prayed for as he for himself alone is not competent to challenge the legality or otherwise of the impugned resolution.

23. The contention need not detain us long; u/s 9 of the CPC person who has a cause of action against another would be entitled to institute a suit for such reliefs as he may have against the offending party unless its cognizance is barred expressly or impliedly. In the instant case, the company by a resolution purported to terminate the employment of the plaintiff and according to the plaintiff such resolution is void and ultra vires. Though the plaintiff cannot sue for enforcement of a contract for personal service, being barred u/s 21 (b) of Specific Relief Act, 1877, there is no bar in his seeking a declaration from court that the impugned resolution is void and ultra vires. As pointed by Mr. Sen, the plaintiff is most vitally affected by the said resolution which affords him the cause of action for the suit against the company and the fact that the shareholders are no parties to the suit, cannot in my opinion defeat the suit, nor is their presence necessary for adjudication of the issues involved in the proceeding.

24. The plaintiff has instituted the suit, as we have seen, for a declaration, that the impugned resolution was void and ultra vires in that the mandatory provisions requisite for passing such resolution were not complied with. The suit therefore is not one against a wrongful dismissal nor one for enforcement of a contract of personal service. The plaintiff accordingly is entitled to establish in a court of competent jurisdiction that the impugned resolution being in violation of mandatory provisions of the statute is a nullity and of no effect and thus had no existence in law. If it is found so, he would be entitled to such declaration and be further entitled to consequential and ancillary reliefs which flow from such declaration inter alia namely that he is in the employ of the company and for an injunction restraining the defendants from interfering with the plaintiff's service under the company. This is a far cry from a suit for declaration that a termination of service is wrongful or for enforcement of a personal contract of service. Section 21 (b) or Section 42 of the Specific Relief Act, 1877 can thus be no bar to the suit for the said declaration, as it is not for enforcement of a personal contract of service but for a declaration of a legal right that a particular resolution of a company, affecting the claimant's status, is void for non-compliance of statutory provisions which are mandatory. On a consideration of the materials on record and the principles of law referred to above, I have no doubt in my mind that the suit as framed is maintainable in law and the plaintiff would be entitled to the reliefs if he succeeds in establishing that the impugned resolution is ultra vires and void for non-compliance of the mandatory provisions of the statute.

25. Mr. Banerjee strongly relied on the decision of the Supreme Court in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, and next contended that obviously the plaintiff had no statutory status nor there was any statutory obligation to be observed by the company in terminating the service of the plaintiff. The plaintiff accordingly could not seek for any declaration that he continued in service and his only remedy, if any, was for damages for the alleged wrongful termination and nothing beyond. He referred to Article 992 of Halsbury's Laws of England, Third Edition, Volume 25, wherein it is laid down that the remedy of a wrongfully dismissed servant is either to treat the contract as repudiated by the master and sue for damages or he may acquiesce in the master's wrongful act, treat the contract as rescinded in which case he may sue as upon a quantum meruit for the value of work done but not paid but he cannot pursue both.

26. It appears that the letter dated July 29, 1963 informing the plaintiff about the termination of his service was merely a communication by the Managing Director. It is not the Company's case that the service was brought to an end, with retrospective effect, by the Managing Director himself. The termination of service accordingly had its authority in the resolution of the shareholders. The plaintiff's case is that the said resolution was in breach of statutory provisions of the Companies Act, 1956 which are mandatory and accordingly was bad, invalid and inoperative. On such case, this suit is not really one for a declaration that

the termination of service is illegal and wrongful but of a resolution being void and inoperative. In the Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, there was no dispute that order of dismissal was passed by the competent authority, the dispute being about the non-observance of some regulation which according to the Supreme Court did not impose any mandatory obligation under the statute on the Corporation. In the Vines case (1956) 3 All ER 939 the declaration that the order of the disciplinary committee terminating the employment of a dock worker was a nullity was granted in view of the finding that the local board had no authority to delegate such power to the disciplinary committee and further such order being a nullity the name of the worker was never removed from the register and he continued in the employ of the National Dock Labour Board. The other cases referred to above were considered as cases of wrongful dismissals arising from ordinary contracts of master and servant and the courts did not grant the specific performance of a personal contract of service though in Barbar's case (1958) 1 All ER 322 a declaration that the Minister acted in breach of statutory duty was given in his failure to hear the appeal against the order of termination of service.

27. The maintainability of a suit for declaration as here will thus depend on whether the impugned resolution terminating the employment is in breach of any statutory provision which is mandatory. This principle has been recognised in the Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, in which it has been stated that no declaration to enforce a contract of personal service will be normally granted, but there are exceptions and one such exception being when a statutory body acts in breach of a mandatory obligation imposed by a statute. The same view was taken by the Privy Council in the case of the High Commr. for India and Pakistan v. I.M. Lall AIR 1948-PC 121 in which the procedure in Section 240(3) of the Government of India Act, 1935 had not been followed and the Court granted the declaration that the purported dismissal of the Civil Servant was void and inoperative and he remained a member of the Civil Service at the date of institution of the suit for such non-observance of the mandatory provisions of the statute.

28. Mr. Banerjee has also contended that a termination of service may also take place by preventing the employee from discharging his duties under the service. Reliance was placed on Batt's "Law of Master and Servant" (5th Edition page 270) in which doctrine of repudiation is also extended to cases when a master refuses to allow the servant to fulfil his contract of service and it was observed that a dismissal may be effected by such conduct. Similar view was taken in re: Rubel Bronze & Metal Co. Ltd. 1918-1 KB 315 (321) which was cited in support. According to the plaint the allegations are that the plaintiff was forcibly prevented access into the office by the sons of the defendant No. 2 at his instance on July 30, 1963, when the plaintiff attempted to go to his office. These allegations which are denied in the written statement, constituted according to the company a termination of service and may be a wrongful one, argued by Mr. Das who also addressed me at times, for which the remedy would be a suit for

damages. In fact, the plaintiff claimed Rs. 3000/- as damages in the present suit which was not pressed at the hearing.

29. This contention has no substance as it is not the case of the defendant that there was any termination of service apart from the impugned resolution and refusal to allow the plaintiff to discharge his duties must obviously be on the basis of the impugned resolution which is the plaintiff's case. Accordingly there was no occasion for termination of service by mere refusal to allow the plaintiff to discharge his duties from his service under the company.

30. In support of his contention that the resolution of July 29, 1963 was void and ultra vires, Mr. Sen has drawn my attention to Sections 171 and 172 of the Companies Act, 1956. Section 171 provides that a general meeting of a company may be called by not less than twenty one days' notice or a shorter notice, if consent is given thereto by 95% part of its paid up capital having voting right (sic,). Section 172 provides for the contents of the notice as also time and place of the meeting while Section 173 provides for explanatory statements of any special business. According to Mr. Sen the provisions of Section 172 are mandatory and no resolution can be validly passed unless the formalities of the said section are complied with and a resolution passed without compliance of the said requirements will be void and ultra vires. On a careful (sic) of the provisions of Section 172 of the Companies Act, 1956, I have no doubt that the contentions of Mr. Sen are correct and have to be upheld. I hold accordingly that the provisions of the said section have been made expressly mandatory and for good reasons and the same must be strictly complied with to ensure the validity of resolutions placed at the meeting and non-compliance of the said provisions would make such resolutions void and ultra vires.

31. In the instant case, the resolution to the effect that the post of Supervisor was to be abolished and that Chunnilal Daw was to be appointed a store-in-charge from May 1, 1963 and that he ceased to hold and to continue to hold his present office as store-in-charge of the company with effect from May 1, 1963 was never notified to the shareholders. Accordingly for default in compliance with the mandatory provisions of Section 172 of the Act the said resolution cannot but be held as invalid and void. It may be noted that resolutions which were notified to the shareholders were not moved at all and it has not been and cannot be argued that the impugned resolutions were amendments to the resolutions notified as indeed they are not so nor claimed as such.

32. Mr. Banerjee has drawn my attention to a decision of the Court of Appeal in re: Trench Tubeless Tyre Co. 1900 1 Ch. 408. In this case a resolution for voluntary winding up of the company by special resolution was legally passed. The notice of the confirmatory meeting included the appointment of a named person as liquidator; at the meeting the resolution for the appointment of the named liquidator was dropped and another person was appointed liquidator without further notice. This appointment was objected to by some debenture-holders but the Court of appeal overruling the objection held that:

"When a resolution for the voluntary winding-up of a company has been passed at a meeting called upon proper notice any one can at that meeting either with or without notice, propose the appointment of a liquidator....."

Everyone connected with companies should know that, as soon as a resolution for voluntary liquidation has been passed, the appointment of liquidator can be proposed and carried," The above decision was cited in support of the validity of the impugned resolution.

33. It does not clearly appear from the above decision whether there was any mandatory provision in the statute regarding appointment of a liquidator after a voluntary resolution for winding up is passed. In case of the Companies Act of our country, the provisions are expressly mandatory. In case of companies incorporated or deemed to be so incorporated under the Companies Act, which are accordingly bodies created by the statute, there is this express obligation provided in the Section 172 of the Act before a resolution can be adopted. The language of the obligation in Section 172 as already observed, clearly Indicates its mandatory nature and accordingly the non-compliance will have the fatal consequence of rendering the resolution void and ultra vires. In the eye of law, such resolution is to be deemed as being never in existence. Such an event took place when the company, in the instant case, purported to pass a resolution which was not at all notified in gross violation of the mandatory obligations under the statute. The resolution impugned in the suit is accordingly void and ultra vires and has no existence in law. The plaintiff accordingly became entitled to a declaration prayed for in prayer (a) of the plaint. As consequential reliefs the plaintiff is also entitled to further reliefs as decreed by the courts below.

34. As all the contentions raised On behalf of the appellants fail the appeal is dismissed without however any order as to costs in the court.

35. Leave under Clause 15 of the Letters Patent is prayed for and granted.

36. As prayed for by the learned counsel for the appellant, let operation of this decree remain stayed for a period of three weeks from date.