
(1987) 08 MAD CK 0063
In the Madras High Court

The Central Co-operative Bank Ltd.

APPELLANT

Vs

M. Parthasarathi

RESPONDENT

Date of Decision : 14-08-1987

Acts Referred:

Citation : (1988) 1 LW 479 : (1988) 1 MLJ 210

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The respondent is the Secretary of the appellant-Bank, having risen to the position from the ranks. He was punished for some misconduct by an award of suspension for a period of two years and by reduction of pay from Rs. 1,050 to Rs. 900. That period of suspension came to an end on 13.10.1978. On that day, the respondent went to the Office of the appellant Bank for reporting to duty. The Special Officer, who was in charge of the Bank, directed him to come on the next day. i.e., on 14.10.1978, though he received the joining report, which he returned to him. On 14.10.1978, the Special Officer, issued a memo, marked as Ex. A4 which reads as follows:

It has been brought to the notice of the Special Officer, Kumbakonam Central Co-operative Bank that a case in Kumbakonam North Police Station has been registered against Thiru K.S.Mani, M.L.C. and ex-Chairman, Kumbakonam Central Co-operative Bank Ltd., Kumbakonam and Thiru M.Parthasarathi, Secretary of the Kumbakonam Central Co-operative Bank Ltd., Kumbakonam in connection with the sale of tickets for Mu Ka Muthu benefit music performance and that the case is under investigation.

2. Pending prosecution and disciplinary action against Thiru M.Parthasarathi, he (Thiru M.Parthasarathi) is hereby placed under suspension for a period of three months with effect from 14.10.1978 F.N. He is requested to acknowledge receipt of the proceedings.

2. The respondent filed the suit, out of which this appeal arises, challenging the

validity of the said order of suspension, which was contained in that memo. He raised several grounds against the validity of the order, chief among them being- (1) there cannot be a suspension on the ground of pendency of a criminal prosecution under the bye-laws of the society; (2) the order of suspension was vitiated by Mala Fides and (3) when other staff members were in similar situations facing criminal proceedings, they were not suspended.

3. The suit was resisted by the appellant Bank on the footing that it was a suit to enforce specific performance of a contract of service and, therefore, not maintainable in law. It was also contended that the Special Officer, acted on the information furnished by the Registrar of Co-operative Societies, and, therefore, his order could not be challenged in a civil proceeding. The allegations of Mala Fides were denied.

4. The trial Court considered the evidence on record In Extensio and held that the order passed by the Special Officer was vitiated by Mala Fides. It was also found that the Special Officer had no power to pass an order of suspension under the bye-laws as they stood at that time pending the criminal proceedings. The trial Court also held that the civil Court had jurisdiction to consider the matter and it was not a case of an ordinary master and servant. In that view, the trial Court granted a decree in favour of the respondent. That was confirmed on appeal by the learned Subordinate Judge, Thanjavur. All the findings of the trial court were confirmed by the learned appellate Judge.

5. In this second appeal, the findings of fact arrived at by the Courts below on the question of Mala Fides and the non-existence of the power in the Special Officer under the bye-laws as they stood at that time, were not challenged before me. Learned Counsel also made it clear that the interpretation of the bye-laws adopted by the Courts below is correct. Only two contentions were urged by learned Counsel for the appellant. The first contention is that the suit is barred by virtue of the provisions of Section 100 of the Tamil Nadu Co-operative Societies Act read with Section 119-A of the said Act. With reference to this contention, learned Counsel relies upon a judgment rendered by me in Ramanathapuram District Consumers" Co-operative Wholesale Stores Ltd. Vs. S. Balasubramanian and Another, . In that case, a similar order of suspension was passed by the Special Officer in charge of the Ramanathapuram District Consumers" Co-operative Wholesale Stores Ltd., pursuant to a specific direction given by the Registrar of Co-operative Societies. I had held that the direction given by the Registrar of Co-operative Societies fell within the scope of Section 119-A of the Act and inasmuch as the said order of the Registrar was not challenged, the order of suspension passed by the Special Officer in obedience to such a direction given by the Registrar could not be challenged in the civil suit. I had, therefore, dismissed the suit filed by the employees. Learned Counsel for the appellant contends that in the present case too, there was a direction by the Registrar of Co-operative Societies under Ex.B4, dated 13.10.1978. Ex.B4 is a communication from the Registrar of Co-operative Societies to the Special Officer

of the appellant Bank and it reads thus:

The Assistant Inspector-General of Police, Madras, has informed that a case in Kumbakonam North Police Station Cr.No.489/88 u/s 420, I.P.C. has been registered against Thiru K.S.Mani. M.L.C., ex-Chairman and Thiru M.Parthasarathi, Secretary, Kumbakonam, Central Co-operative Bank in connection with the sale of tickets for Mu Ka Muthu music performance and that the case is under investigation. Pending prosecution and disciplinary action against Thiru M. Parthasarathi, you may place him under suspension with immediate effect.

6. One of the contentions raised by the learned Counsel for the respondent is that Ex.B4 does not contain a specific direction and it leaves the matter to the discretion of the Special Officer and, therefore, it cannot be read as a direction within the meaning of Section 119-A of the Act. I think it is unnecessary to deal with that contention in view of certain facts which appear on the face of the record. Ex.B4, no doubt bears the date 13.10.1978 but it has been received by the Special Officer only on 16.10.1978. It cannot, therefore, be contended that the order of suspension issued by the Special Officer under Ex.A4 was made in pursuance of Ex. B4. In the course of the arguments in the trial Court, it was urged that there was a telephonic communication by the Registrar to the Special Officer before Ex. B4 was actually sent. There is no evidence whatever in support of that contention. In fact there is no pleading with reference to that aspect of the matter. In paragraph 12 of the written statement it is stated that the Special Officer had issued the suspension order in pursuance of the information received from the Registrar of Co-operative Societies Madras, about the filing of a criminal complaint against the respondent. Even in that paragraph it is not stated that the order of suspension was issued pursuant to a direction from the Registrar. Curiously, neither the Special Officer nor any other person has gone into the witness box to speak to any of the facts alleged by the defendant in the written statement or urged during the course of arguments in the trial Court. In the absence of any evidence to show that the order of suspension was issued pursuant to a specific direction given by the Registrar the contention of learned Counsel for the appellant that the suit is barred by virtue of Section 100 of the Co-operative Societies Act cannot be accepted. There was no direction u/s 119-A of the Act as found in the case Ramanathapuram District Consumers' Co-operative Wholesale Stores Ltd. Vs. S. Balasubramanian and Another, , decided by me earlier. Hence, the contention of learned Counsel for the appellant is rejected. I must, however, state that learned Counsel for the respondent challenged the truth and genuineness of Ex.B4. I do not think it necessary to consider that aspect of the matter in the view I have expressed above.

7. The only other contention urged by learned Counsel for the appellant is that the suit is one to enforce a contract of service between a master and servant and, therefore, it is not entertainable by a civil Court. Learned Counsel draws my attention to the provisions of the Specific Relief Act. Section 14 of the Specific

Relief Act of 1963 in so far as it is relevant, which corresponds to Section 21 of the predecessor Act reads thus:

14(1). The following contracts cannot be specifically enforced, namely

(a) a contract for the non-performance of which compensation in money is an adequate relief;

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

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the Court cannot supervise.

The only difference between the provision in the Act of 1877 and the present Act of 1963 is that in the earlier Act, there were four more sub-clauses in addition to the sub-clauses found in the present section. Apart from that, there were illustrations to each of the sub-clauses in the previous Act. The present Act has completely omitted all the illustrations. In my view, the deletion of the illustrations does not make any change in the substantive law. Section 14(1)(b) of 1963 Act corresponds to Section 21(b) of the Act. The wording of the clause is identical. The crucial words in Section 14(1)(b) are-"a contract... which is so dependent on the personal qualifications or volition of the parties". The other portions of the clause are not necessary for the present purpose.

8. When the clause refers to the fact that the contract is so dependent on the personal qualifications or volition of the parties, it means that the contract is of such a nature that it can be given effect to only if the parties thereto are willing to do so. If any one of the parties is not willing to give effect to that contract, the other party cannot enforce the same because of the nature of the contract. The remedy of the other party will only be in damages, where rendering of personal services under a contract is dependent upon the volition of the parties or where the Act stipulated required special knowledge, skill, ability, experience or the exercise of judgment, discretion, integrity and like personal qualities. In short, whenever a performance of service under the contract rests on individual will of the contracting party, the Court cannot direct specific performance of that contract.

9. It is clear from the reading of the Section that emphasis is laid on personal relations of the employer and employee and their volitions. The principles which apply to cases of individual employer and employee cannot apply *Proprio Vigore* to cases where the employer is a corporate body or an institution. In the latter case, the employer, i.e., the institution will by necessity have to be governed by a set of uniform rules. The reason is not far to seek. Institutions will come to be managed by different individuals at different times. The person at the helm of

affairs for the time being cannot act according to his will and pleasure in the management of the institution. He has to function within a particular framework governed by rules framed for the proper functioning of the institution. Such rules can of course be changed, not by individual will but according to a prescribed procedure. That makes all the difference and necessarily a contract of employment between an employer institution and an employee may fall outside the scope of Section 14 of the Specific Relief Act.

10. It is the contention of learned Counsel for the appellant that the contract between a master and servant will depend upon the volition of the parties, and therefore, when there is a breach thereof, the Court cannot enforce the same. Learned Counsel relied upon the following observations of the Supreme Court in *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, .

This brings us to the next point for consideration as to whether or not the plaintiff respondent's case fell within the exceptions laid down by this Court to the general rule that the contract of personal service is not specifically enforceable. In this connection as early as 1964 in *S.R. Tewari Vs. District Board Agra and Another*, , this Court observed as follows-Under the common law the Court will not ordinarily force an employer to retain the service of an employee whom he no longer wishes to employ. But, this rule is subject to certain well recognised exceptions. It is open to the Court in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by doing so, 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, is 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 breach of mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do.

To the same effect is the decision of this Court in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , where it was observed as follows-"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 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 statute.

In *Indian Airlines Corpn. v. Sukhdeo Rai* 1971 Supp. S.C.R. 510, this Court also observed as follows: "It is a well settled principle that when there is a purported termination of a contract of service, a declaration that the contract of service still

subsisted would not be made in the absence of special circumstances because of the principle that Courts do not ordinarily grant specific performance of service. This is so, even in cases where the authority appointing an employee was acting in exercise of statutory authority. The relationship between the person appointed and the employer would in such cases be contractual, i.e. as between a Master and Servant, and the termination of that relationship would not entitle the servant to a declaration that his employment has not been validly determined.

To the same effect is the decision of this Court in *Bank of Baroda Ltd. Vs. Jeewan Lal Mehrotra*, where this Court observed as follows: The law as settled by this Court is that no declaration to enforce a contract of personal service will be normally granted. The well-, recognised exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Article 311-A. (2) Where reinstatement is sought of a dismissed worker under the industrial law by labour or industrial tribunals; (3) where a statutory body has acted in breach of a mandatory obligation imposed by statute;

In *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, the matter was exhaustively reviewed and Ray, J. (as he then was) observed as follows: The cases of dismissal of a servant fall under three broad heads, purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract of personal service. Such a declaration is not permissible under the law of Specific Relief Act.

The second type of cases of master and servant arises under Industrial Law. Under the branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial law. This is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

The third category of cases of master and servant arises in regard to the servant in the employment of the State or other public or local authorities or bodies created under statute.

On a consideration of the authorities mentioned above, it is therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service, can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions: (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being

dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

11. Learned Counsel also relies upon the decision in that case that a society registered under the Registration of Co-operative Societies Act was not a statutory body so as to fall within the third category of cases referred to above. Learned Counsel relied upon *Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another*, for the same proposition. Similarly in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, the Supreme Court has held that a society registered under the Societies Registration Act is not an "authority" falling within the definition of "State" under Article 12 of the Constitution of India. In all these cases, the Supreme Court made a distinction between a body which was created by a statute and a body which was created under a statute. The fact that has been laid down by the Supreme Court is that if the particular body owes its existence to the provisions of the statute and if it cannot have any independent existence, then it will be a statutory body. If the particular body has an independent existence outside the provisions of the statute, then it will not be a statutory body. Learned Counsel, therefore, contends that the Central Co-operative Bank is only a Co-operative Society registered under the Co-operative Societies Act, and it is not a body which owes its existence to the Co-operative Societies Act. According to him, it has got an independent existence outside the provisions of the Co-operative Societies Act, though it has to function according to the provisions of the Co-operative Societies Act and the rules made thereunder. Learned Counsel also places reliance on two decisions of this Court, in *K.M. Bhaskaran and Ors. v. State Bank of India Staff Co-Operative Societies Ltd.*, rep. by Its Secretary, Madras and Ors. 1984 W.L.R. 1, being that of Nainar Sundaram, J. and in *P. Kannan v. Office of The Director of Sugars, Madras* 1984 Writ L.R. 152, being that of Ratnavel Pandian, J. Both the decisions take the view that Co-operative Society is not an authority within the meaning of Article 12 of the Constitution of India and a writ petition against the same is not maintainable. Of course,, learned Counsel for the appellant himself drew my attention to the decision of Nainar Sundaram, J., in *Mahadevan v. Special Officer, Dy. Registrar, South Arcot, Saravanabhaga Consumers Co-Operative Wholesale Stores Ltd., Cuddalore* 1987 W.L.R. 120, in which the learned Judge has taken the view that a writ petition against a Special Officer of a Co-operative Society was maintainable, as he had in that case acted on the directions of the Deputy Registrar of Co-operative Societies. In the latter decision, Nainar Sundaram, J., has referred to a decision of Venkataswami, J., in *Varadaraja v. Special Officer, T.U.C.S. Ltd.* 1985 W.L.R. 251 wherein the learned Judge has taken the view that a writ petition was maintainable against the T.U.C.S. Ltd., Venkataswami, J., had only followed the ratio of a Bench of this Court in *Venkatachala v. The Registrar of Co-Operative Societies, Madras and Ors.* W.A.74 of 1970, dt. 13.11.1973, as that case also related to the T.U.C.S. Ltd.

12. In answer to the contentions of learned Counsel for the appellant, the learned Counsel for the respondent submitted that a case of suspension is

different from a case of termination of a contract of service. According to the learned Counsel for the respondent, in the case of suspension, the relationship of Master and Servant is not ended, but it continues to exist. The principles applicable to a case of termination of service will not apply to cases of suspension from service. In fact, learned Counsel relied upon the observations of the Supreme Court in *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, wherein a distinction was made between a suspension of a contract of service and a suspension from performing the duties of office. In that case, it was held that there was no suspension of contract of service, and, therefore, the employee could send his notice of termination of service and put an end to his services. I do not think that the said distinction would help the respondent in the present case. In this case, it is not as if the appellant had directed the respondent merely to stop from performing the service so that he would be entitled to full pay on the footing that he continued to be a servant of the society. The order of suspension reads as if it is a suspension of the contract of service as contemplated in the decision referred to above.

13. The next contention urged by learned Counsel for the respondent is that in the cases of Master and Servant, the principle that the Court will not enforce a contract of service will not apply if it is a case of public body or a body like a Co-operative Society or company. Such principle could be applied only to ordinary cases of Master and Servant or a contract of service between Individuals. In this connection, reliance is placed upon the observations of Bhagwati, J., (as he then was) in *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, referred to already. His Lordship has *In Extenso* dealt with this aspect of the matter and pointed out that the ancient doctrine of the Court's non-interference with contracts of services between parties will not be applicable in modern days. His Lordship has observed thus:

... Let me first examine this question on principle before turning to the decided cases. There are two distinct classes of cases which might arise when we are considering the relationship between employer and employee. The relationship may be governed by contract or it may be governed by statute or statutory regulations. When it is governed by contract, the question arises whether the general principles of the Law of Contracts are applicable to the contract of employment or the law governing the contract of employment is a separate and *Sui Generis* body of rules. The crucial question then is as to what is the effect of repudiation of the contract of employment by the employer. If an employer repudiates the contract of employment by dismissing his employee, can the employee refuse to accept the dismissal as terminating the contract and seek to treat the contract as still subsisting? The answer to this question given by general contract principles would seem to be that the repudiation is of no effect unless accepted, in other words, the contracting party faced with a wrongful repudiation may opt to refuse to accept the repudiation and may hold the repudiator to a continuance of his contractual obligation. But does this rule apply to wrongful repudiation of the contract of employment? The trend of the

decisions seems to be that it does not. It seems to be generally recognised that wrongful repudiation of the contract of employment by the employer effectively terminates the employment; the termination being wrongful, entitles the employee to claim damages, but the employee cannot refuse to accept the repudiation and seek to treat the contract of employment as continuing. What is the principle behind this departure from the general rule of law of contract? The reason seems to be that a contract of employment is not ordinarily one which is specifically enforced. If it cannot be specifically enforced, it would be futile to contend that the unaccepted repudiation is of no effect and the contract continues to subsist between the parties. The law in such a case, therefore, adopts a more realistic posture and holds that the repudiation effectively terminates the contract and the employee can only claim damages for wrongful breach of the contract. Now a contract of employment is not specifically enforced because ordinarily it is a contract of Personal Service, and, as pointed out in the first Illustration to Clause (b) of Section 21 of the Specific Relief Act, 1877, a contract of personal service cannot be specifically enforced. Of course, this illustration has now been omitted in the new Specific Relief Act, 1963 and what would be the effect of such omission may be a point which may require consideration some day by this Court. But for the purpose of this case, I will proceed on the assumption that even under the new Act, the law is the same and it frowns on specific enforcement of a contract of personal service. Now what is the rationale behind this principle? That is found stated in the Locus Classicus of Fry, L.J. in *De Frances Co v. Burnum* (1890) 45 Ch. D. 430, "For my own part, I should be very unwilling to extend decisions the effect of which is to compel persons who are not desirous of maintaining continuous personal relations with one another to continue those personal relations. I have a strong impression and a strong feeling that it is not in the interest of making that the rule of specific performance should be extended to such cases. I think the Courts are bound to be jealous, lest they should turn contracts of service into contracts of slavery; and therefore, speaking for myself, I should lean against the extension of the doctrine of specific performance and injunction in such a manner.

This rationale obviously can have application only where the contract of employment is a contract of personal service involving personal relations. It can have little relevance to conditions of employment in modern large-scale industry and enterprise or statutory bodies or public authorities where there is professional management of impersonal nature. It is difficult to regard the contract of employment in such cases as a contract of personal service save in exceptional cases. There is no reason why specific performance should be refused in cases of this kind where the contract of employment does not involve relationship of personal character. It must be noted that all these doctrines of contract of service as personal, non-assignable, unenforceable, and so on, grew up in an age when the contract of service was still frequently a "personal relation" between the owner of a small workshop or trade or business and his servant. The conditions have now vastly changed and these doctrines have to be

adjusted and reformulated in order to suit needs of a changing society. We cannot doggedly hold fast to these doctrines which correspond to the social realities of an earlier generation far removed from ours. We must rid the law of these anachronistic doctrines and bring it in accord "with the felt necessities of the times". It is interesting to note that in Fry's classic work on Specific Performance, contracts of service appear in a small group under the sub-heading "Where enforced performance would be worse than non-performance". We may ask ourselves the question-for whom it would be worse and for whom it would be better. Where, in a country like ours, large numbers of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service may have to remain without means of subsistence for a long period of time. Damages equivalent to one or two months wages would be poor consolation to him. They would be wholly insufficient to sustain him during the period of unemployment following upon his discharge. The provision for damages for wrongful termination of service was adequate at a time when an employee could without difficulty find other employment within the period of reasonable notice for which damages were given to him. But in conditions prevailing in our country, damages are a poor substitute for reinstatement; they fall far short of the redress which the situation requires. To deny reinstatement to an employee by refusing specific performance in such a case would be to throw him to the mercy of the employer; it would enshrine the power of wealth by recognising the right of the employer to fire an employee by paying him damages which the employer can afford to throw away but which would be no recompense to the employee. It is, therefore, necessary and I venture to suggest, quite possible, within the limits of the doctrine that a contract of personal service cannot be specifically enforced, to take the view that in case of employment under a statutory body or public authority, where there is ordinarily no element of personal relationship, the employee may refuse to accept the repudiation of the contract of employment by the statutory body or public authority and seek reinstatement on the basis that the repudiation is ineffective and the contract is continuing. That is in effect what happened in the case of *McClalland v. Northern Ireland General Health Service Board* (1957) 1 W.L.R. 504 : (1957)2 All. Eng. Rep. 129. The plaintiff's contract in this case was really one of master and servant, the only special condition being that her post had been advertised as "permanent and pensionable", and it provided specific reasons such as gross misconduct and inefficiency, for which she might be dismissed. The defendant Board introduced a rule after her appointment that women employees must resign on marriage and since the plaintiff got married, the respondents terminated her service by giving what they thought was a reasonable notice. The plaintiff contended that the defendant Board was not entitled to terminate her service and claimed a declaration that the purported termination was null and void and she continued in service. The House of Lords held that the contract was exhaustive as regards the reasons for which the defendant Board could terminate the service of the plaintiff and since none of those reasons admittedly existed the termination of service of the petitioner by the defendant Board was nullity and

the plaintiff continued in service of the defendant Board. This was a case of a pure contract of master and servant and yet the House of Lords held that the termination of employment of the plaintiff by the defendant Board which was not accepted by the plaintiff was ineffective and the plaintiff was entitled to a declaration that she continued in service. It should thus be possible to hold that even if a statutory body or public authority terminates the service of an employee in breach of contractual obligation, the employee could disregard the termination as ineffective and claim a declaration that his service is continuing. But this would be a somewhat novel and unorthodox ground which has not been recognised by any decision of this Court so far and moreover, I do not think, that, on facts, this is a proper case in which it would really be applicable and hence, I do not propose to finally pronounce upon it.

14. Though his Lordship has not chosen to give a final pronouncement on that aspect of the matter, I am of the opinion that an occasion has arisen in this case to consider that aspect and give a decision in view of the facts of the present case. With respect, I agree with the observations made by his Lordship that the law has to have relevance to conditions of employment in modern large-scale industries and enterprises or statutory bodies or public authorities where there is professional management of impersonal nature.

15. In the case of individuals entering into a contract of service, the position is entirely different. As regards the individuals, there are no set of rules which have to be obeyed by the master, though the master may frame rules to be obeyed by the servants. The matter entirely depends upon the will or rather the whims and fancies of the master. He may choose to dismiss a servant on any minor pretext. But, still the servant cannot enforce the contract of service and compel the master to continue his services. In such cases, the remedy of the servant may be to claim damages. But, the position is different in the case of institutions. With regard to institutions, the employer is the institution itself and not the individual in management for the time being. The society or corporate body which is a legal entity is the employer. The person who acts on behalf of that employer is an individual who is liable to be transferred and whose position is liable to be changed in course of time. For example, this appellant Bank is managed at present by one Special Officer. Within a few years, another Special Officer may come in his place and his understanding of the rules may be different. If a Special Officer acts in a manner which is against the bye-laws of the society or which is against the rules prescribed for the conduct of the management of the society, then such conduct cannot bind the society itself, in other words, the employer. In that context, if the position is viewed, it can be easily seen that the principle that a contract of employment cannot be enforced between two parties and it depends upon the volition of the parties may not be fully applicable. In this case, the volition of the parties cannot depend upon the individual whims and fancies of the particular person in management of the society. On the facts of this case, it has been held that the Special Officer has acted *Mala Fide*. In fact, when the respondent gave a joining report, it was returned to the respondent by

the Special Officer and the respondent was directed to come on the next day. before the respondent could meet him on the next day, the Special Officer arranges for lodging a complaint with the police for an offence which is said to have taken place long prior to that date and based on that complaint, the Special Officer passed an order of suspension stating that there is a criminal proceeding pending against the respondent. Once it is held on the facts that the order of the Special Officer is vitiated by Mala Fides and that the Special Officer has no power under the bye-laws to suspend any employee of the society on the ground that some criminal proceedings are pending against him, it will be a travesty of justice for a Court of law, even if it is a Court of equity, to keep its hands off in such circumstances, and say that the suit filed by the employee to get that order of the officer declared null and void is not maintainable. I am of the opinion that in such circumstances, the Court must interfere and declare that the order of suspension is null and void.

16. It is this principle which has been elaborately enunciated by Bhagwathi, J., in the judgment referred to above. His Lordship was not prepared to give a final pronouncement on the facts of that case, because he agreed with the other two learned Judges and held that the discretion of the Court should not be exercised in favour of the respondent therein, and that the appeal filed by the Society should be allowed. I am of the opinion that the discretion of the Court should be exercised in favour of the respondent in the present case and the appeal should be dismissed.

17. The bye-laws of the Co-operative Society will have to be obeyed by the person in management, be he the Special Officer or the Board of Directors. The bye-laws represent the will of the Society which is the real employer. Any change therein has to be brought about by the collective will of the members of the society and that too in accordance with the procedure laid down by the Act and the rules. It is not possible to hold that a contract of employment between a person and a co-operative society depends on the volition of the parties in the same way as a contract between individuals. When the Special Officer acts in accordance with the bye-laws, his order terminating or suspending a contract of service will be valid and beyond challenge. If on the other hand, he acts in contravention of the bye-laws or outside the scope of the bye-laws, his order does not represent the volition of the society which is the employer. In such a case, it cannot be said that Courts are helpless merely because it is a contract of employment. Nor can it be treated as a breach of contract by the employer (Society), thereby incurring a liability for damages.

18. The matter can be approached from another angle also. It is seen from the decisions of the Supreme Court that the rule that a Court would not enforce a contract of service among the parties is not an absolute rule. It has got exceptions. In fact, the Supreme Court has referred to three exceptions as early as in 1964 in S.R. Tewari Vs. District Board Agra and Another, . The exceptions were extended by A.N. Ray, C.J. in 1973 in Sirsi Municipality by its President Sirsi

Vs. Cecelia Kom Francis Tellis, . The learned Chief Justice added a fourth category, viz., "other public or local authorities or bodies created under statute. Though this decision of A.N. Ray, C.J. was considered in Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors. (1976)2 S.C.R. 1006 : AIR 1976 S.C. 888 : (1976) 2 S.C.C. 58, the majority consisting of Khanna and Murtaza Fazal Ali, JJ. were of the opinion that A.N. Ray, C.J., did not in fact add a fourth category to the exceptions. But, for the sake of argument, they assumed that the scope of the exceptions was extended and proceeded to consider whether the relief could be granted to the respondent therein under the provisions of the Specific Relief Act. Their Lordships took the view that on the facts of the case, they had to exercise their discretion against the respondent and consequently allow the appeal. However, their Lordships have pointed out that in special cases, relief could be granted against the termination of contract of services. In fact, their Lordships observed at the end of their judgment thus-"in view of these special and peculiar circumstances of this case, we feel that it will not be a proper exercise of discretion to grant a decree for declaration and injunction in favour of the respondent".

19. In the judgment of Bhagwati, J., who had also come to the same conclusion as the other two Judges, but on a different reasoning, his Lordship had referred to some of the English decisions on this aspect of the matter and pointed out that in special cases, the relief could be granted to a party against the termination of a contract of service. One of the cases referred by his Lordship is *McClelland v. Northern Ireland General Health Service Board* (1957) 2 All Eng. Rep. 129 : (1957) 1 W.L.R. 504. In that case, the House of Lords held that the termination of employment of the plaintiff by the defendant Board was ineffective as it was not accepted by the plaintiff and the plaintiff was entitled to a declaration that she continued in service. In the judgment of Fazal Ali, J., there is a reference to the decision of the Court of Appeal in *Hill v. C.A. Parsons and Co. Ltd.* (1971)3 W.L.R. 995. In that decision, Lord Denning, M.R. observed thus:

Suppose, however, that the Master insists on the employment terminating on the named day? What is the consequence in law? In the ordinary course of things, the relationship of master and servant thereupon comes to an end; for, it is inconsistent with the confidential nature of the relationship that it should continue contrary to the will of one of the parties thereto. As Viscount Kilmuir, L.C. said in *Vime v. National Dock Labour Board* 1957 A.C. 488 to the ordinary master and servant case. If the master wrongfully dismisses the servant, either summarily or by giving in sufficient notice, the employment is effectively terminated, albeit in breach of contract. "Accordingly, the servant cannot claim specific performance of the contract of employment. Nor can he claim wages as such after the relationship has been determined. He is left to his remedy in damages against the master for breach of the contract to continue the relationship for the contractual period. He gets damages for the time he would have served if he had been given proper notice, less, of course, anything he has, or ought to have earned, in alternative employment. He does not get damages

for the loss of expected benefits to which he had no contractual right; See *Lavarack v. Woods of Golchester Ltd* (1967)1 Q.B. 278. I would emphasise however, that is the consequence in the ordinary course of things. The rule is not inflexible. It permits of exceptions. The Court can in a proper case grant a declaration that the relationship still subsists and an injunction to stop the master treating it as at an end. That was clearly the view of the Privy Council in the latest case on the subject, *Francis v. Kaula Lampur Councillors* (1962)1 W.L.R. 1411, where Lord Morris of Borth-y-Gest said, at pages 1417, 1418; "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" adding that "special circumstances will be required before such a declaration is made".

Let me give an example taken from the decided cases. Suppose that a senior servant has a service agreement with a company under which he is employed for five years certain-and, in return, so long as he is in the service, he is entitled to a free house and coal-and at the, end to a pension from a pension-fund to which he and his employers have contributed. Now, suppose that, when there is only six months to go, the company, without any justification or excuse, gives him notice to terminate his service at the end of three months. I think it plain that the Court would grant an injunction restraining the company from treating the notice as terminating his service. If the company did not want him to come to work, the Court would not order the company to give him work. But, so long as he was ready and willing to serve the company, whenever they required his service, the Court would order the company to do their part of the agreement, that is, allow him his free house and coal, and enable him to qualify for the pension fund. I take this illustration from the cases of *Ball v. Coggs* (1710) 1 Bro. Parl. Cas. 140 ; *East India Co. v. Vincent* (1740) 2 Atk. 82 ; *Cuckson v. Stones* (1858)1 E & E 248 ; and *Warburton v. Co-Operative Wholesale Society Ltd.* (1917)1 K.B. 663. It may be said that, by granting an injunction in such a case, the Court is indirectly enforcing specifically a contract for personal services. So be it. Lord St. Leomards did something like it in *Lumley v. Wagner* (1852)1 De G.M. & G. 604. And I see on reason why we not do it here.

20. Another case which is referred to by the Supreme Court is that of *Jerome Francies v. The Municipal Councillors of Kola Lumper* (1962) 1 W.L.R. 1411. Speaking for the Judicial Committee, Lord Morris of Borth-Y-Gest observed thus:

... In appealing to their Lordships" Board the main contention of the appellant was that, inasmuch as his purported dismissal had been found to be *Ultra Vires*, it should be held that this dismissal was null and void, and that he was and still is employed by the respondents, and that it should be so declared. It was said, therefore, that the question raised in the appeal related only to the form of remedy appropriate to the conclusion of the Court of Appeal, against the validity of which there was no cross-appeal. As an alternative, it was contended that if (contrary to the appellant's submission) it were held that the appellant had been

dismissed then the damages should be increased. On behalf of the respondents it was submitted that the president had in fact exercised his power of dismissal but, furthermore, it was submitted that, if that were not so, the employment of the appellant had nevertheless been terminated by his employers (the respondents) with the result that there had, De Facto, been dismissal and that at its highest the claim of the appellant could only be for damages for wrongful dismissal. It was submitted that where a person is employed under a contract of service, and where there is neither any kind of vested interest nor any special statutory status, a repudiation of the contract or a wrongful termination of it by way of dismissal operates to put an end to the contract with the result that the remedy lies, and lies only in a claim for damages.

For the purposes of this appeal it must be accepted that the dismissal of the appellant was irregular. The letter of October 1, 1957, shows that the dismissal was by the council and was not the result of an exercise by the president of his power of dismissal. It is apparent however that the argument for the appellant rests very considerably upon a technicality. The president was a party to the decision of the establishment committee at their meeting on September 18. So also was he a party to the decision of the full council at their meeting held on September 30, at which he presided. The president did, however, in his evidence say that it was the council's decision that the appellant be dismissed and that the matter had not rested with him but with the establishment committee and the full council; he said that the usual procedure was that if he formed the opinion that some one should be dismissed the matter went before the establishment committee, and that if his decision was not approved of by the establishment committee he would "waive" his decision. He added that in his capacity as president the only communication by him to the appellant was in his letter of October 28, and he said "Till that date I did not dismiss the plaintiff. It appears, therefore, both that the president would have been prepared either before or on September 30 to remove the appellant from his office, and also that he concurred in the decision of the council to terminate the appellant's services. Accepting, however, the decision of the Court of Appeal, which, as has been pointed out, has not been the subject of any cross-appeal, the position on October 1, was that the removal of the appellant was a removal by the Council and not by the president. The council were his employers, but having regard to the provisions of the Ordinance their termination of his service constituted wrongful dismissal. Their Lordships consider that it is beyond doubt that on October 1, 1957, there was De Facto a dismissal of the appellant by his employers, the respondents. On that date he was excluded from the council's premises. Since then he has not done any work for the Council. In all the circumstances, it seems to their Lordships that the appellant must be treated as having been wrongly dismissed on October 1, 1957 and that his remedy lies in a claim for damages. It would be wholly unreal to accede to the contention that since October 1, 1957 he had continued to be, and that he still continues to be, in the employment of the respondents. During the argument before their

Lordships Board a question was raised as to whether, notwithstanding the powers given to the president by Section 16(5) of the Ordinance, the council as employers and parties to the service contract had an independent right to determine it, as for example, by giving some reasonable period of notice. This point does not appear to have been raised at the trial or in the Court of Appeal, and their Lordships do not consider that it should now be explored, and they express no opinion in regard to it. A further question was raised as to whether on any view the president's letters of October 28, 1957 did not appear to have been canvassed at the trial or in the Court of Appeal. Their Lordships express no opinion in regard to it.

In their Lordships' view, 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 normally be in the discretion of the Court. In their Lordships' view, there are no circumstances in the present case which would make it either just or proper to make such a declaration.

In *Vine v. National Dock Labour Board* 1957 A.C. 488, Ormerod, J. had in his discretion made such a declaration and the House of Lords, adopting the view expressed in his dissenting Judgment in the Court of Appeal by Jenkins L.J. (1956) 1 Q.B. 658, was of opinion that the declaration had been rightly made. In that case, however, the circumstances were very special. The plaintiff was and had been for some 30 years a dock labourer. As a result of legislation designed to remove the objection of those so employed that theirs was a purely casual occupation so that their right to work depended upon the accident of its availability at the docks, all dock labourers were registered as employed by the National Dock Labour Board though they never in fact worked for the Board. In the circumstances, of that case it was held to be right that the plaintiff-whose dismissal was shown to have been without proper authority-should have benefit of a declaration that he was still in the employment of the National Board, since, unless he was, he would be disabled from carrying on, at all his chosen trade of a dock labourer.

21. I am of the opinion that the facts of this case provide the special circumstances contemplated by the English decisions for granting the specific relief prayed for by the plaintiff enforcing the contract of service or declaring the termination of service to be ineffective or null and void.

22. In that view, it is not necessary to consider whether a Co-operative Society is a statutory body or it is an authority within the meaning of Article 12 of the Constitution of India. Even assuming for the sake of argument that it is not a statutory body or an authority under Article 12 of the Constitution of India, this being a civil suit, a decree can be passed against the Co-operative Society as it is a legal person and the plaintiff is seeking to enforce a civil right. However, I

would refer to the contention of learned Counsel for the respondent that the Special Officer of the appellant-bank having been appointed u/s 4 of the Tamil Nadu Co-operative Societies (Appointment of Special Officers) Act, 1976 (Act 25 of 1976) is a statutory authority. u/s 4(2) of the Act, the Special Officer shall, subject to the control of the Registrar and to such directions as he may, from time to time, give, have power to exercise all or any of the functions of the committee or the board. It is, therefore, submitted that the special officer is a statutory authority and any order passed by him can be questioned in a civil Court. This contention is supported by the decision of Nainar Sundaram, J., referred to earlier in Mahadevan V. Special Officer By Registrar, South Arcot Saravanabhava Consumers Co-Op. Wholesale Stores Ltd., Cuddalore 1987 W.L.R. 120. No doubt, as pointed out by learned Counsel for the appellant, in the case dealt with by Ratnavel Pandian, J. in Kannan v. Director of Sugars, Office of The Director of Sugars, Madras 1984 W.L.R. 152, the society was managed by a Special Officer. Though his Lordship refers to the contention of counsel for the appellant before him that the special officer being a statutory authority, could be subjected to the writ jurisdiction, he has not ultimately considered that aspect of the matter in the judgment. He has proceeded to hold the Co-operative Society was not an authority within the meaning of Article 12 of the Constitution of India and the writ petition was not maintainable. In my view, the Special Officer being a statutory authority, the validity of his orders could be questioned in a Court of Law.

23. Learned Counsel for the respondent drew my attention to the decision of Balasubrahmanyam, J. in Madurai District Co-operative Supply and Marketing Society Limited Vs. S. Sankaranarayanan and Others, . In that case, the learned Judge upheld the decision of the Court below that the suit against the Cooperative Society challenging the order of dismissal from service was maintainable. The learned Judge observed in paragraph 9 as follows:

... It is a well-known feature of the law relating to master and servant, that an employee who is wrongfully terminated from his employment has a remedy to sue his employer in a civil Court.

This observation is rather widely stated. No doubt, Courts have recognised the remedy of the employees, but so far the remedy that was granted to employees in such cases was only in damages and not reinstatement in service. However, in that case, his Lordship has held that the suit was maintainable.

24. To a similar effect is the decision of Maheswaran, J. in Musiri Cooperative Land Development Bank Ltd. v. Ranganathan Etc. 97 L.W. 548, which has also been relied upon by the learned Counsel for the respondent. In that case, his Lordship held that the order of termination of service was null and void as the disciplinary enquiry was not properly held and was in violation of the principles of natural justice. His Lordship took the view that it went to the root of the matter and as the order was null and void, the suit could be maintained. His Lordship considered the provisions of Section 100 of the Tamil Nadu Co-operative

Societies Act and held that they did not bar the filing of the suit. Neither the decision of Balasubrahmanyam, J. nor the decision of Maheswaran, J. considered the applicability of the principle that a contract of service cannot be enforced among the parties.

25. Learned Counsel for the respondent drew my attention to the decision of Raghava Rao, J., in the Andhra University v. Lakshmi Mancharan (1951) 1 M.L.J. In that case, a suit was filed for a declaration that the order of termination of service was null and void. The contention was that a suit for bare injunction was not maintainable without a consequential prayer for damages or any other relief. Negating that contention, his Lordship observed that there can be a suit for a simple declaration as that would help the vindication of the plaintiff's character which stood tarnished by the wrongful dismissal. His Lordship observed as follows:

I do not and cannot subscribe to the argument of learned Counsel for the appellant that in every case like this there can only be a suit for damages or a suit for restoration to office and there cannot be a *Tertium Quid* in the nature of a suit like the present, although there is no doubt that is ordinarily so. The fact that the plaintiff may well have pursued the remedy of an action for damages in tort does not, in my opinion, necessarily preclude the present form of suit if otherwise in order. The plaintiff has not accepted the breach, and the circumstance that on account of his procurement of employment elsewhere he has not asked for damages does not disentitle him to sue as he has done. It is said that the plaintiff ought to have asked for damages however nominal-be it a pie at the lowest, or at the least. I see no magic about such a claim-that its presence in the plaint should give it life and that its absence should leave it lifeless.

26. In the view I have taken in this matter, it is not necessary to confine the decree to a declaration. The decree granted by the Courts below is one for declaration as well as injunction. I see no reason to interfere with the same.

27. In the result, the second appeal fails and is dismissed with costs.