

(1989) 08 KAR CK 0011

In the Karnataka High Court

Case No : Regular First Appeal No. 361 of 1985

United Theological College

APPELLANT

Vs

Sunny Kulathakkal

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : (1989) ILR (Kar) 3320 : (1989) 2 KarLJ 456

Hon'ble Judges : Hiremath, J

Bench : Single Bench

Advocate : V.K.K. Nair, for the Appellant; H.R. Venkataramanaiah, for the Respondent

Final Decision : Dismissed

Judgement

Hiremath, J

1. The appellant herein is the United Theological College, Bangalore, registered under the Karnataka Societies Registration Act, 1960. It has got its own Memorandum of Association, Rules and Regulations and Bye-laws, copy of which is produced at Exhibit P-1 and relied upon by both sides. The Constitution of the Society states that it shall be administered by a Council which is referred to in the suit as a "Governing Council". The Council shall meet as provided under the Memorandum of Association ("Memorandum" for short hereafter) under Clause 8, at such times and places as they shall from time to time appoint, and may make such rules and regulations as they think proper relating to the summoning and holding of meetings and for the transaction of business thereat, and they may adjourn such meetings, and from time to time fix the quorum necessary for the transaction of business, but until they shall otherwise determine seven members of the Council shall form a quorum. The Secretary of the Council has been authorised to convene a meeting of the Council by giving to each member notices referred to in Clause-9. Among other powers under Clause 14(a), it has powers to appoint, suspend, or remove the Principal of the College, the Directors

of Divisions, Heads of Departments and other members of the full-time teaching staff; to define their duties and fix their salaries and allowances. Clause 14(e) provides for appointment of an Executive Committee consisting of the President of the Council, the Principal, the Secretary, the Treasurer of the Council ex-officio and at least two members elected by the Council at its annual meeting. Thus, it is one of the powers of the Council "to appoint" an Executive Committee, In short this Council appears to be the body in over-all control of the entire administration of the respondent-College.

2. The Executive Committee under Clause 17 shall normally be convened by the Principal and shall transact all the interim business of the Council. Four members shall constitute a quorum. The minutes of this Committee shall regularly be communicated to all the Members of the Council. Exhibit P-1 also consists of the Bye-laws of the College Council. It enumerates functions and duties of various officers Including that of the Principal. He Is the Executive Head of the College having responsibility for the general administration of its affairs in accordance with rules and policies laid down by the Council. He shall be responsible for implementing the decisions of the Council. In consultation with the Faculty, he shall recommend to the Council the appointment, confirmation, promotion or termination of service of teaching staff. He shall recommend to the Council the appointment, confirmation, promotion or termination of administrative staff as well. As far as his powers of appointment are concerned they are confined to the service staff alone and as such he shall appoint, confirm, promote and terminate the services of such staff. He shall submit an annual report to the Council on the total work of the College. The administrative staff under Bye-law II(a) consists of the Principal, the Bursar, The Registrar, The Director of the Development Department, The Librarian and Assistant Librarians and College Hostess.

3. These being some of the clauses in the Memorandum as well as Bye-laws, the respondent-plaintiff was appointed as an Associate Director of the Development Department in the College from the 1st of September, 1969. How he was appointed and by whom, is a very relevant aspect which finds place in paragraph-4 of the plaint and necessary to be reproduced herein to make the discussion hereafter clear and understandable. Paragraph-4 of the plaint says thus:

"By a letter dated the 24th of April, 1969, the Governing Council of the United Theological College (the defendant herein) made an offer to the plaintiff inviting him to join the Administrative Staff of the College as an Associate Director of the Development Department from the 1st of September, 1969, and that the appointment was to be for a period of one year in the first instance. In the letter written by the Principal of the defendant College, he had expressed his opinion that the appointment of the plaintiff would be continued even after one year. Plaintiff accepted the offer made to him by the Governing Council. In pursuance of a resolution passed by the Governing Council of the defendant, plaintiff was appointed as an Associate Director of the Development Department in the

College from the first of September, 1969. In due recognition of his efficiency, integrity and merit, plaintiff was promoted as the Director of the Development Department of the College by the Governing Council. Plaintiff was duly confirmed as Director and as a permanent member of the staff during the year 1973."

4. He was discharging his duties in the College honestly and faithfully with a spirit of dedication and it is not in controversy now that he was entrusted with the duty of collecting funds for the development of the College. Accordingly, he was sent by the appellant on a public relations and "fund raising mission" for the College to the Gulf Countries on 5th of December, 1976 and returned to this Country on 18th of January 1977. Soon after he returned, he found a charge-sheet lying in his house dated 11-12-1976 issued by the Principal. The charges levelled against him were groundless. However, on 25-1-1977 another charge-sheet was sent to him to which he sent a consolidated reply on 10-2-1977 repudiating all the allegations made therein. He maintains that issue of charge-sheet to him as well as his reply sent were not placed before the Governing Council of the College which met on 2-4-1977. He was under the bonafide belief that the matter had been dropped. To his surprise on 4-4-1977, the Principal called to his residence and complained that the plaintiff was trying to influence some of the Members of the Governing Council in connection with the extension of his services which was against the discipline of the College and asked him to resign from his post. When he refused to obey, the very day another charge-sheet was sent to him to which he replied on 9-4-1977. The Principal had addressed a letter to the members of the Executive Committee on 25-2-1977 advising his resignation. No enquiry was held on the charges levelled against him in the letters referred to above and he was denied opportunity to vindicate his innocence either before the Governing Council or before any other authority.

5. At the meeting of the Executive Committee held on 1-4-1977, it was resolved that the plaintiff be granted 8 months' leave from 1-5-1977 onwards and by letter dated 17-4-1977 written by the Principal he was intimated that the Executive Committee of the defendant College had authorised the Principal to inform him that his services as Director of the Development Department would not be continued beyond 30-4-1977 and that in lieu of notice, salary for three months would be paid to him. He met the Principal on 18-4-1977 and expressed his dissatisfaction with the action of the Executive Committee. This resolution of the Executive Committee, the intimation sent by the Principal of the Resolution are in challenge in this suit. He maintains that he was confirmed as a Director of the Development Department in 1973 and was drawing total emoluments of Rs. 800/- per month and also entitled to certain perquisites including rent free furnished quarters. He holds the Masters Degree in Economics from the University of Kerala in 1976 and has undergone training in Journalism. He has acquired training in Journalism. He has acquired one year of Secretarial Training in Bangalore, himself is a free-lance journalist and is a regular contributor of articles, features and profiles to various magazines and periodicals. The challenge is of the resolution of the Executive Committee on the ground firstly, it

had no power to pass such a resolution and no enquiry was held on the charges levelled against him. He was not heard before the decision was taken and entire procedure adopted by it is violative of the principles of natural justice is illegal and void. In fact, there was no order of the Governing Council with regard to his discontinuance of the services. The Governing Council has not taken any decision terminating or discontinuing his services. The plaintiff got issued a notice after he received the order from the Principal and the reply given by the appellant is not of any consequence. Maintaining that his services having not been duly terminated he says that he is entitled to emoluments from 1-5-1977 as well as to damages for the wrongful, illegal and unjust discontinuance of his services, Rs. 4,000/- towards arrears of salary upto 1-11-1977 and Rs. 4,000/- towards damages. His prayer in the suit was as follows:

"(a) for a declaration that the Resolution passed by the Executive Committee of the defendant-College under the original of Annexure-G is void, illegal, inoperative and ultra vires;

(b) for a declaration that the plaintiff continues to be in service of the defendant College as Director, Development Department;

(c) for recovery of Rs. 4,000/- towards arrears of salary; and

(d) for recovery of Rs. 4,000/- towards damages."

6. Contesting the suit, the defendant-appellant -maintained that it is not correct to say that the services of the respondent could be terminated only by the Governing Council. On the contrary, the Principal is the appointing authority of all the staff of the College and also the authority to terminate services as directed by the Governing Council or the Executive Committee and in the instant case, the Principal was the one who issued appointment order to the plaintiff as Director of Development Department and services of the plaintiff stood terminated with effect from 1-5-1977. Resolution of the Executive Committee of the College was circulated to the Council of the College and as no objection was raised within the stipulated period, it stands valid and hence the services of the plaintiff stood terminated with effect from 1-5-1977 and the terminology used as "Miscontinuance of service" is in effect termination of services and the plaintiff was given three months' salary in lieu of notice. He was only a member of the administrative staff and as such his appointment or termination did not have to be decided by the Governing Council. Therefore, the termination of his services by the Executive Committee is correct, legal and in accordance with law.

7. Paragraph-4 of the written statement relates to the misconduct of the respondent. He was deputed to visit the Gulf Countries to raise funds for the defendant College which he undertook in December 1976 and January 1977 and collected subscriptions and donations from friends and donors of the College and on behalf of the defendant and has intimated the defendant about the sum total of the amounts collected by the plaintiff but has not rendered an account or remitted the admitted amounts collected by him for and on behalf of the

defendant inspite of repeated requests and demands which action amounts to misappropriation of funds and criminal breach of trust. While admitting about the emoluments and perks the defendant maintains that after his services were terminated, he was bound to vacate quarters which he has not done and separate proceedings are being initiated. He is now working as an Editor of the Gulf Directory on full time basis and therefore, his prayer for re-instatement is only to harass the defendant. His Interests are in no way jeopardised nor his rights effected by this order of termination. About the relief, the appellant has contended that the plaintiff is not entitled for declaration that the resolution passed by the Executive Committee is void or illegal and that the plaintiff continues to be in service. Similarly his claim for damages and arrears of salary is denied. In fact, when his services were terminated he was due to the appellant a sum of Rs. 2,710/- and interest and he was also due a part of the loan taken by him for purchase of scooter. Hence, the suit is liable to be dismissed. On these pleadings, the Court below framed the following issues:

- "1. Whether the plaintiff proves that the executive committee of defendant society has no powers to take a decision to terminate his services?
2. Whether he further proves that the decision by the Executive Committee to terminate his services is illegal, void and ultravires;
3. Whether he further proves that no opportunity was given to him before the decision?
4. If so, is he entitled for a declaration sought for?
5. Is he entitled for an arrears of his salary of Rs. 4,000/-?
6. Is he entitled for any damages?
7. If so, to what extent?
8. What decree or order?"

Issue Nos. 1 to 5 answered in the affirmative and issue Nos. 6 and 7 in the negative and consequently, the Court below gave the decree in the following terms:

"The suit of the plaintiff is partly decreed declaring that the order passed on 17-4-1977 as per Ex.P-7 is null and void. Further, the defendant is liable to pay a sum of Rs. 4,000/-with proportionate cost of this suit to the plaintiff."

In challenging this decree of the Court below though good many grounds have been raised in the appeal memo, the learned Counsel for the appellant conceded that the principles of natural justice have been violated in passing order of termination in consequence of the resolution passed by the Executive Committee and to that extent it may be said that the resolution is violative of the principles of natural justice. The main thrust of the argument of the learned Counsel for the appellant is that the Court below was incompetent to make a declaration that the

respondent continues to be in service of the defendant College as Director of Development Department and also a declaration that resolution passed by the Executive Committee of the College is void, illegal and inoperative, A declaration of this nature would virtually amount to enforcement of a contract for personal service which the Court below could not have done. If the question of the relationship of master and servant is kept in view such a decree was beyond the jurisdiction of the Court below. It was also canvassed that the resolution of the Executive Committee is quite in accordance with the powers conferred on it by the Memorandum and therefore, it becomes an order of termination passed by the master and at the most, the respondent-plaintiff may be entitled for damages for wrongful dismissal if the order cannot sustain. It was also argued that it was not the Governing Council who had appointed the plaintiff/respondent, but the Principal.

8. On the other hand, it is urged for the respondent/plaintiff that if the resolution could be construed as the one to be within the powers of the appointing Authority, the relationship of master and servant would be between the respondent and the Executive Committee and in that event alone the appellant would be entitled to canvas before this Court that a decree for declaration of the nature sought in the plaint could not be passed by a Civil Court. In the instant case, however, it was neither the Principal nor the Executive Committee who had appointed the respondent. The Appointing Authority in fact, was the Governing Council or the Council as is stated in the Memorandum and therefore, was beyond the competence of the Executive Committee to pass the resolution challenged in the suit. In that event, the order of termination does not become an order by Master but an order passed by someone else who had no power or authority to terminate the services of the respondent. Therefore, when someone else and not the Master terminated the services, the order terminating the services becomes one without any jurisdiction or authority and hence could be validly challenged and the Courts are competent to grant the relief in the nature sought. Giving such a declaration in such an eventuality did not amount to indirectly enforcing specific performance of personal contract. Hence, according to the respondent's Counsel, the decree made by the Court below is quite in accordance with law and does not call for interference.

9. In order to determine whether the Executive Committee was competent to pass the impugned resolution it is also necessary to determine who exactly is the appointing Authority of the respondent and who appointed him. It is for these reasons that the averment in para-4 of the plaint has been extracted at the commencement of this Judgment and the averment has been made that it was the Governing Council and the Governing Council alone which was empowered to appoint the Director or the Assistant Director to which post respondent was appointed and later on he was promoted as Director of Development Department. I have also extracted at length the various powers of the Governing Council as the parties put it or the Council as referred to in the Memorandum and find that the powers of the Principal do not extend to the appointment of a

Director. The Executive Committee has, of course, no powers to appoint any of the employees of the College. The Principal, as already stated, is empowered to appoint only members of the Service Staff. On the other hand, the administrative staff consists of the Principal, the Bursar, the Registrar, the Director of the Development Department, the Librarian and the Assistant Librarians etc., whereas, the Service Staff under Clause 11(d) of the Bye-laws consists of Peons, Watchmen, etc. The Maintenance of Staff under Clause 11(e) consists of garden malees, sweepers, driver, binder, etc. The Office Staff consists of Stenographers and Typists. Therefore, it is apparently clear that Principal is not competent to appoint any member of the Administrative Staff but his powers are confined only to the appointment, termination and promotion of the Office maintenance and Service Staff. Clause 14(a) of the Memorandum makes reference to the Principal of the College, Directors of Divisions, Heads of Departments and other members of the fulltime teaching staff and does not show that the Director of the Development Department which post the respondent was holding at the time of termination of his services was not in any way concerned as a Director of any Division. However, the Bye-laws make reference to the Divisions and the work of the College would be decided into two divisions each with a Director and a Divisional Committee appointed by the College Council. The Divisions are, the Division of Research and Post-Graduate Studies and Division of Graduate Studies. The Executive Committee it may be stated at the cost of repetition has not been given any independent power of appointment, removal, suspension etc. As already stated, it shall only transact all the interim business of the Council and the minutes of Committee shall be regularly communicated to all the Members of the Council.

10. What exactly would be the scope of this interim business entrusted to the Executive Committee is a matter on which both the learned Counsel attempted to satisfy the Court on his view of interpretation. The appellant's Counsel has urged that the Council is too unwieldy a body to assemble and transact business as frequently as necessary and therefore, the Executive Committee is empowered to transact the business which also includes the business of this nature and need not be confined only to routine administrative matters. On the other hand, it is argued for the respondent that the very word "interim" clearly goes to show that it was an arrangement that was thought of in the Memorandum between the two meetings of the Council to attend to certain urgent matters which may not wait till the Council meets. Therefore, the power to appoint or power to terminate the services of an employee of the College cannot be considered as falling within the scope of an interim business of the Executive Committee. Even the appellant's Counsel does not say that either the Memorandum or the Bye-laws give any power to the Executive Committee to appoint any of the employees of the College either administrative or otherwise and it has only to function within the ambit of the powers given under the Memorandum. I find it difficult to accept the interpretation attempted to be placed on behalf of the appellant on this term "interim business" of the Council. As one commonly understands the word

"interim" only connotes some arrangement to continue till a final arrangement is made and final decision is taken. Quite often the Courts have occasion to use such phrases as "interim arrangement", "interim orders" or "interim directions" only with a view to keep things going in a particular way till the finality is reached either in a dispute or in a course of transaction. Therefore, the argument advanced on behalf of the appellant that "interim business" certainly includes power to pass such a resolution now impugned falls within the scope of the powers of the Executive Committee is devoid of merit. Exhibit P-7 is the intimation sent to the respondent and it is dated 17-4-1977. It reads as follows:

"Dear Mr. Kulathakal,

At the meeting of the Executive Committee of the United Theological College, held on Saturday, 16th April, 1977, the following minute was recorded;

"E77/37 - The Services of Mr. Sunny Kulathakal as Director, Development Department:

After some considerable discussion on the work of the Development Department over the past 18 months it was:

RESOLVED to authorise the Principal to inform Mr. Kulathakal that his services as Director, Development Department would not be continued beyond 30th April, 1977, and that in lieu of three months notice, three months' salary would be paid to him.

In this connection it was noted that Mr. Kulathakal had taken a loan of Rs. 2,000/- from his P.P. account and Rs. 4,000/- towards purchase of a scooter which had not been fully repaid. It was understood that satisfactory arrangements for the settlement of these loans will have to be made."

I am sorry that such a minute had to be recorded. It was the unanimous opinion of the Executive Committee that it is in the best interests of the College and your own future that you seek some other avenue of service for which you have special gifts.

Let me assure you of my prayers for God's guidance and blessing as you face this situation."

Yours sincerely, Sd/- (J.R.Chandran) Principal"

It could thus be seen that what was communicated to the respondent was not the decision of the Principal to terminate the services of the respondent but it was the resolution of the Executive Committee, The Principal only feels sorry that such a minute had to be recorded in the meeting of the Executive Committee. Therefore, the decision to terminate was not the decision taken by the Principal, it was also canvassed that the notices issued to the respondent to show cause on various dates as per Exhibits P-2, P-3 and P-5 clearly made grave allegations against the respondent and the respondent did send replies to these notices and the allegations therein and the authority of the Principal who issued the same

were challenged. Therefore, it can be deemed that the respondent had understood and recognised that the Principal was competent to take disciplinary action against the respondent. But what is noteworthy is that in all these notices his explanation was called for without any whisper of disciplinary action to be taken by the Principal. It is only in Exhibit P-5 dated 4-4-1977 that the Principal stated that the respondent should inform him within a week and not later than 11-4-1977 the reasons that he might have to state against his asking the Executive Committee of the College Council to take disciplinary action against him. Therefore, if Exhibit P-5 is any indication it would only go to show that the Principal called upon the respondent to furnish his explanation so that the same could be communicated to the Executive Committee. Therefore, under any circumstances it cannot be said that the Principal was the appointing Authority and therefore he was also competent to take disciplinary action against him. The position with regard to the Executive Committee is apparently clear from the powers given to it and referred to above and it is not possible to conclude that the Executive Committee was the appointing Authority and hence competent to terminate the services of the respondent. A clear averment was made in the plaint that it was the Council who appointed the respondent and that it was the Council that promoted him to the post of Director. In the written statement as already referred to above, nowhere it was stated that it was Executive Committee which had appointed him and therefore, it was competent to terminate his services. On the other hand, it is clearly stated that the Principal had issued the appointment order to the plaintiff. If that was the truth of the matter the Principal had powers to take disciplinary action against him and also to pass the order of termination. But in the instant case, he has only communicated the resolution passed by the Executive Committee and himself has not taken any decision. Therefore, in the first instance, the records do not disclose that it was the Principal who had appointed the respondent and therefore, he is competent to terminate his services and secondly, the Executive Committee could not admittedly appoint the respondent and therefore, has no independent power to terminate his services. It is not the case of even the appellant that the power was validly delegated to the Executive Committee to take such disciplinary action. It is also argued for the appellant that the burden of showing who is the appointing Authority should not be shifted to the appellant inasmuch as It is the respondent who has approached the Court and he must satisfy the Court as to who had appointed him. When evidence had been led by both sides, on the plea of onus of proof, the appellant cannot say because the respondent has not placed any material it must be presumed that whatever the appellant has stated is true. Even in the legal notice issued before filing the suit, the respondent has not stated anywhere that he was appointed by the Principal or by the Executive Committee. Even in the plaint, it is clearly stated that it was the Council who had appointed and who had promoted him. In that situation, it was also open to the appellant to satisfy the Court that it was Principal who had appointed the plaintiff. It appears when the Principal himself did not pass any such order, the appellant could not stick up to this contention but had to contend

that the Executive Committee had power to pass the impugned resolution. In my view, from this evidence on record, there is no alternative but to hold that it was Governing Council which was competent to appoint the respondent and which in fact, did appoint him and therefore, Executive Committee had no power to pass the impugned resolution by which also his services are stated to have been terminated.

11. When the finding is rendered as to the incompetence of Executive Committee to pass the impugned resolution terminating the services of the respondent it follows that the order passed by the Executive Committee is without authority and does not partake the nature or character of an order passed by a Master against a servant. It was also contended that because the appellant replied to the legal notice that the order passed by the Executive Committee is just and proper, it follows that the same has been ratified by the Council. Its reply to legal notice cannot be construed as a valid ratification for the simple reason that the Court below on discussing the evidence adduced before it has come to the conclusion that a ratification sought to be made out by the appellant has not been proved. Mere circulation of the Resolution of the Executive Committee among the Members by itself does not amount to ratification. When inherently the Executive Committee was only incompetent and when there was no delegation of power, the question of ratification does not arise. Therefore, the Court has now to see what would be the effect of such an order which has no sanction behind it of an authority empowered or competent to terminate the services of the respondent.

12. Argument has been advanced on behalf of the appellant that even if the order cannot be said to have been passed by an authority competent to pass it, in view of the decision of the Supreme Court in the case of Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, the order is not the one covering the exceptions to the normal rule. The Supreme Court observed that normally a contract of personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant. The exceptions to the normal rule that no declaration to enforce a contract of personal service will be granted are: (1) a public servant who has been dismissed from service in contravention of Article 311(2) reinstatement of a dismissed worker under Industrial Law or by Labour or Industrial Tribunals; (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute.

13. The dismissal of an employee of the U.P. State Warehousing Corporation was for consideration before the Supreme Court. It would be relevant to advert to paras 16 and 17 of the Judgment in the first instance. Their Lordships of the Supreme Court referred with approval to the Vine's case. At paragraph-16, their Lordships observed that "the question as to when and under what circumstances a relief by way of declaration regarding continuity of service, after holding that an order of dismissal is void or ultra vires, can be given", has been considered both in England and here. The leading decision of the House of Lords which is generally invoked in support of the view that such a declaration can be granted is the decision in VINE v. NATIONAL DOCK LABOUR BOARD 1956(3) ALL E.R. 939. This decision has also been referred to by the Supreme Court in some of its decisions. The case before the House of Lords in the decision referred to above arose under the circumstances stated therein. Having narrated the circumstances, the House of Lords held that the declaration granted by the trial Judge was properly made as the order of dismissal was a nullity since the local board had no power to delegate its disciplinary functions. The cross-appeal filed by the National Board was dismissed. It was observed by one of the learned Judges in that case that the discretion in granting a declaratory Judgment should not be exercised save for good reason and then, summarising the reasons for granting the declaration observations of their Lordships of the House of Lords were extracted as follows:

"First, it follows from the fact that the plaintiff's dismissal was invalid that his name was never validly removed from the register, and he continued in the employ of the National Board. 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 insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of plaintiff's name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the 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."

"This is not a straightaway relationship of master and servant. 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 could only sound in damages.

Here we are concerned with a statutory scheme of employment. The scheme gives a dock worker a status. Unless registered, he is deprived of the opportunity of carrying on what may have been his lifelong employment as a dock worker, and he has a right and interest to challenge any unlawful act that interferes with this status. If the actings here complained of were a nullity, Mr. Vine (hereinafter called the plaintiff"), in my opinion, has a clear right to have that fact declared by the Court."

Then His Lordship proceeded to add that it would be noted that the House of Lords, in the decision, have emphasized that order striking off the plaintiff from the register v/as not considered a simple case of a master terminating the services of the servant, but, on the other hand, was treated as one affecting the status of the plaintiff and whose services have been terminated by an authority which had no power to so terminate and, as such, the order was treated as void. The House of Lords have also emphasised that due to the intervention of the statute which safeguards the right of the dock worker, the order not being in accordance with the statute, must be treated as a nullity. It was under those circumstances that the House of Lords restored the decree of the Court of first instance granting a declaration regarding the continuity of service of the plaintiff therein. It must again be emphasised that the order, the validity of which was considered by the House of Lords, was treated as a nullity.

At paragraph 20, their Lordships proceeded to add that from a review of the English decisions, referred to above, the position emerges as follows:

"The law relating to master and servant is clear. A contract for personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. This is the normal rule and that was applied in *Barbar's* case, 1958 All 322 and *Francis's* case, 1962 All 633. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant."

14. In relying on these observations of the Supreme Court, the learned Counsel for the appellant has emphasised that the Supreme Court has clearly pointed to three exceptions under which the normal rule that no declaration to enforce the contract of personal service could be departed from. Added to that, in the instant case, there is no statutory status for the respondent and therefore, the respondent is not entitled to a declaration that the order terminating his services is null and void. There is no question of he being protected by any statute as was in the case of *Vine*, referred to by the Supreme Court.

15. It must be said that the argument proceeded on the basis that even though there was violation of principles of natural justice and removal was illegal, it was by the master and not by anyone else. What is emphasised by on behalf of the respondent is that here is a case in which the termination has not been by the appointing authority or to out it in other words by the master but by someone else who is totally incompetent to pass such an order and therefore, even if the decision of the Supreme Court in the case referred to above is relied upon, the appellant cannot say that the Court is incompetent to give declaration sought for.

It is also urged on behalf of the respondent that the power of the Court to grant a declaration of this nature is not circumscribed by any limitation. In this behalf, my attention was drawn to a decision of the Madras High Court in the case of *The Andhra University, a Corporate body with its headquarters at Vizakhapatnam Vs. Korada Durga Lakshmi Manoharam*, rendered u/s 42 of the Specific Relief Act, 1877. The learned Single Judge, Raghava Rao, J very succinctly observed that Section 42 contemplates only a suit for a judicial declaration of the legal character or status of a party or of his right as to any property, and a suit by a servant for bare declaration that the orders dismissing him were unjust and illegal is not of that kind. Hence, Section 42 does not apply. The Section, however, is not exhaustive of all possible declaratory suits, and a suit for a declaration of breach of contract lying in the wrongful dismissal of the plaintiff from the defendant's service uncoupled with a claim of damages for such breach but conceived solely with a view to the vindication of the plaintiff's character which stands tarnished by such wrongful dismissal, is maintainable. No Court ought to be unduly solicitous to throw out a declaratory suit unless its un maintain ability or the inexpediency of its entertainment is made out in strict is sima juris and beyond the slightest shadow of a doubt. The same observations were elaborated in paragraphs 8 and 12 of the Report. Relying on this and also a decision of this Court in the case of *State of Karnataka and Another Vs. T. Srinivas*, it has been argued for the respondent that the present Section 34 of the Specific Relief Act cannot be construed as exhaustive of all kinds of declaratory reliefs. The learned Judges of the Division Bench of this Court in the aforementioned case observed that the provisions of Section 34 of the Act and the provisions of Section 9 of the Code are not in pari materia. The words "legal character" u/s 34 of the Act do not have the same meaning as the words "civil nature" u/s 9 of the Code. The words "legal character" are not defined under the Act; nor the words "civil nature" defined under the Code, and therefore it is necessary to fall back on the meaning of these words as understood in civil law, that means to say, in the law of jurisprudence that deals with the branch of civil law. It would be correct to proceed on the basis that the words "legal character" mean "legal status".

In that case, however, whether the Civil Court was competent to give a declaratory relief in a suit, where the relief claimed was whether the plaintiff was born on 19-8-1961 was in question. They also observed that there is no principle or authority to exclude the jurisdiction of the Civil Courts to grant a declaration regarding the age of a person which is dependent on his date of birth if that declaration is followed by consequential relief.

16. The learned Counsel for the respondent has mainly contended that if the order passed was by the master, however irregular or illegal it might be the respondent could not have asked for a relief of this nature, viz., to declare that it is null and void. In the instant case, when the facts In the evidence clearly established that the order passed was not by the master but by someone else who was not competent to pass this order at all then the observations of the

Supreme Court in the case referred to above would clearly support the case of the respondent and not the case of the appellant. The Court below having considered the evidence before it has also come to the conclusion that the resolution passed by the Executive Committee was not without any power or authority. I do not find any reasons to come to a different conclusion. In that view of the matter, the resolution that was passed by the Executive Committee was without any authority and without any power and hence, was not passed by the master in exercise of his power to remove a servant and granting the relief that the same is null and void does not amount to grant the relief of enforcement of the contract of employment. The Court below was, therefore, justified in passing the decree in challenge and I do not find any reasons to interfere with the decree of the Court below. No other point was urged.

17. The appeal is, therefore, liable to be dismissed and is dismissed with costs.