
(1962) 10 MAD CK 0021
In the Madras High Court
Case No : Writ Petition No. 528 of 1962

V. Ramiah

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 24-10-1962

Acts Referred:

Constitution of India, 1950 — Article 226, 311

State Bank of India (Sub-Accountants and Head Cashiers) Service Rules — Rule 14

Citation : AIR 1964 Mad 335 : (1963) 2 LLJ 304

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : M.K. Nambiyar, for G. Ramaswami, S.M. Subramaniam and M. Kalyanasundaram, for the Appellant; A.G. instructed by King and Partridge, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The petitioner entered service in 1941 as a cashier in the former Imperial Bank of India. The undertaking of the Bank was in 1955 transferred to the State Bank of India, as it was constituted by the provisions of the State Bank of India Act, 1955. Section 43 of this Act empowers the State Bank to appoint its officers, advisers and employees and determine the terms and conditions of their appointment and service. The petitioner was taken over into the service of the State Bank and was in 1958 appointed as head cashier under an agreement for service entered into on 12-8-1958 with it. Clause 1 of the agreement provided that the petitioner

"shall be and continue to be the head cashier of Virudhunagar branch of the bank from 27-7-1958 at a monthly salary of Rs. 182 only rising, subject to approved service, by such increments as may be granted by the bank at its absolute discretion, such service being determinable on either side by two calendar months" notice to that effect subject as hereinafter provided".

With effect from 1-1-1959, the State Bank of India brought into force the State

Bank of India (Sub-accountants and head cashiers) Service Rules which admittedly govern the petitioner. Whether these rules are statutory is one of the questions to be considered at the appropriate place. Rule 14 makes provision for termination of the service of a head cashier by giving him such notice or such amount in lieu of notice as may be prescribed in his agreement for service with the bank.

Chapter 6 of these Rules deals with conduct and discipline of the bank's employees and the rules contained in this chapter are somewhat peculiar to the nature of the work and conduct in relation to the banking business. Rule 33 particularly lays down a code of conduct for the bank employees and Rule 36 forbids an employee from overdrawing his account with the Bank against security or otherwise without the previous sanction in writing of the specified officers. An employee who falls into debt is required by Rule 37 to disclose his position at once to the bank and indicate how he proposes to rectify his position. Any employee who does not comply with Rule 37 or makes a false statement of his position or is unable to liquidate his debts within a reasonable time shall by Rule 38 render himself liable to dismissal from service. The next rule prescribes six modes of penalties ranging from censure to dismissal, which can be inflicted on an employee who commits a breach of discipline or is guilty of any act of misconduct. Rule 40 indicates the procedure to be followed for imposing any of the penalties. In case of a dismissal, this rule requires a second opportunity to be given to an employee to show cause against the proposed penalty which is more or less analogous to the familiar procedure under Article 311(2) of the Constitution.

In July 1961, when the petitioner was working as head cashier at the Periakulam branch of the bank, the Deputy Secretary and Treasurer at the local head office of the bank at Madras framed four charges against him" alleging that while he was serving at the Madurantakam branch he was having dealings with money-lenders, had taken loans from the bank's constituents at Madurantakam, and had issued cheques in full awareness of the fact that the balance at credit of his account at the Madurantakam branch was insufficient to meet the cheques on the date of drawal; and the two cheques he had issued in June 1961 upon the Madurantakam branch of the bank had been dishonoured for want of sufficient credit to his account. The memorandum of charges stated that the conduct of the petitioner was in breach of Rules 33(1) and 36 of the said Service rules and was unbecoming of a bank employee and called upon him to submit his written statement in defence within a specified time. On 10-8-3:961 he submitted his explanation and on 25-8-1961 he was given an oral hearing. Eventually was served on the petitioner an order of the State Bank of Madras dated 22-2-1962, and signed by the officiating Secretary and Treasurer which was in these terms:

"I have to advise that the Local Board, after having given full consideration to your case at its meeting held today have come to the conclusion that although your misconduct deserves the extreme penalty of dismissal from the Bank's

service, on grounds of compassion, your services should be terminated under Rule No. 14 of the State Bank of India (Sub-Accountant and Head Cashiers) Service Rules and have resolved to terminate your services by giving you two months' salary in lieu of notice, as provided for in clause 1 of your agreement for service with the Bank. Accordingly your services stand terminated with effect from today and we enclose two payment orders in your favour (i) for Rs. 319-06 representing the salary and allowances due to you upto date, and (ii) for Rs. 1055-50 representing salary and allowances in lieu of the two months' notice."

This petition under Article 226 of the Constitution is to call for the records and the order, and issue a writ of certiorari or any other appropriate writ: or direction and quash the same.

2. The grounds on which the petition has been argued are that the order of termination is in effect an order of dismissal which is (1) in violation of the said service Rules, (2) in violation of the principles of natural justice and (3) was not competent for the Executive Committee at Madras to make. It may at once be stated that the ground based on incompetency of the Executive Committee was not pursued in view of certain amendments of the Service rules. Regarding the order as one of termination of service under the terms of the agreement, a further point for the petitioner is made that termination by payment of salary and allowances in lieu of two months' notice is not authorised by the terms of the service agreement as well as Rule 14 of the Service rules.

3. Before dealing with the petitioner's grounds the objection of the learned Advocate General to the maintainability of the petition should first be considered. He submits that the State Bank of India, established, as it is, by the special provisions of the State Bank of India Act, 1955, is, despite its statutory origin, but a commercial corporation or concern doing business in a commercial way and is not a public corporation or public authority with public duties. If he is right in his submission, he says the act of termination of the petitioner's services is a unilateral act indistinguishable from a similar act of a private individual acting on his own terms and conditions of service and that the statutory origin of the Bank makes no difference to the position. This Court will not, therefore, interfere under Article 226 of the Constitution with such an order.

Even regarding the Bank as a statutory authority, in the sense of its statutory origin and functioning within the statutory provisions, there are here no statutory rules of service and so long, as it acts in good faith or bona fide it is not subject to judicial review. From the point of certiorari, the act of termination is not a decision with its usual attributes. Where there is competency" and power, no question of bona fides can arise in relation to its exercise. But where power is exercised" through a statutory authority and an act done, in purported exercise of such power, is shown to be mala fide, the Court at the instance of the aggrieved¹ party will interpose and find that the act cannot be attributed to the authority and is, therefore, void. If the petition is regarded as one for mandamus, the learned Advocate General adds that there is here no public duty

on the part of the Bank to do or to refrain from doing anything in relation to the impugned order.

4. A great deal of argument had been addressed to me by the learned Advocate General for the respondent and Sri M. K. Nambiar for the petitioner on the preliminary objection including copious citation of decisions rendered by the English Courts under different enactments with particular reference to the English principles of Crown proceedings as to the writs of *certiorari* or *mandamus*. While these decisions are undoubtedly of assistance in appreciating the area, conditions and manner of judicial control in England under writ proceedings or other process, the ambit of power conferred on the High Courts under Article 226 of the Constitution, the conditions and manner of its exercise should eventually be judged entirely by its comprehensive terms and wide purposes. Apart from the well-known form of writs, there is in the English Courts vested nothing like the power conferred by Article 226 upon the Indian High Courts. While the particular forms of writs specifically mentioned in the Article go out, the English principles and decisions relating to such forms of writ obtaining in the United Kingdom of Great Britain are certainly of value. So too I think on the question whether a body is a public authority in this country cannot altogether be judged in the light of the considerations and circumstances that one finds have weighed with the English decisions. So, much will depend on the progressive concept of Government, Governmental functions and ideas of welfare State and other relevant factors in our country under the Constitution as well as the Parliament and State legislations.

5. No general definition of what is and what is not a public authority has been attempted by the Courts, as stated in 30 Halsbury's Laws of England, 3rd Edn. page 682, and the Courts have only decided the question in particular cases. but the broad characteristics are, however, stated by the author:

"A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform, and which performs those duties and carries out its transactions for the benefit of the public and not for private profits. Such an authority is not precluded from making a profit for the public benefit, but commercial undertakings acting for profit and trading corporations making profits for their corporators are not public authorities, even if conducting undertakings of public utility. A natural or individual person might, when acting in execution of a public duty, be a public authority for the purpose of the provisions, now repealed which formerly enacted a special period for actions against public authorities."

6. Most of the cases decided by the English Courts appear to be based on the provisions of the Public Authorities Protection Act, 1893, which has since been repealed. *Attorney General v. Company of Proprietors of Margate Pier and Harbour*, 1900-1 Ch 749, referred to by the learned Advocate General is one of such cases in which it was held that a company incorporated by Act of Parliament, not only for the performance of duties of public utility, but also for

the purpose of earning profit, was not entitled to the benefits of the Public Authorities Protection Act. Section 1 of the Public Authorities Protection Act, 1893 provided

"a period of limitation for actions, prosecutions or other proceedings commenced in the United Kingdom against any person for any act done in pursuance or execution, or intended execution of any Act of Parliament, or of any public duty of any authority or in respect of any alleged neglect or default in the execution of any such act, duty of any authority....."

By an Act: passed in 1812, the management of Pier and Harbour of Margate was vested in the company of Proprietors of Margate Pier and Harbour, constituted for the purpose and the company was authorised to complete and maintain the harbour, pier and works then unfinished and to raise moneys for the purpose by the issue of shares, and was empowered to levy and take certain rates and duties, and to borrow money on the security of the rates. The Act further provided how the rates and duties should be applied and stated that the surplus available might be used in paying a dividend to the share-holders, but at a rate not exceeding a certain percentage in any one year. The remaining surplus was to be accumulated as a sinking fund to meet the expenses of future repairs and improvements in the pier and harbour and in the event of dissolution of company, the sinking fund as well as the pier, harbour and works should stand retransferred to the Commissioners of Pier and Pavement. The Attorney General brought the action to determine whether the company had been applying the income in the manner prescribed by the Act of Parliament by which it was incorporated and regulated. It was assumed in the action that it was brought beyond the period of limitation provided by Section 1 of the Public Authorities Protection Act, 1893, and the defence was that the action was barred. It was decided that the company was not a public authority, and that, therefore, no question of limitation could arise. It was observed at page 753:

"Piers and Harbours, are, no doubt, works of great importance to the public, and the maintenance of them is for the public utility. So is a railway, so is a tramway, so is a canal, and one might mention other things in the same category. The company are to spend their money in paying interest on charges, they are to keep up their pier and harbour, and beyond that, except that they are limited to ten per cent dividend, and there is to be a sinking fund provided they are a commercial company, intended to earn, and in fact earning dividends year by year for the benefit of the share-holders. I do not see myself, the distinction between that and a railway company incorporated by special Act, with reference to the Lands Clauses Act, and the Railway Clauses Consolidation Act, 1845, and subsequent Acts. They are companies intended to benefit the public. No special Act of Parliament of that kind is ever passed without a recital that the construction and maintenance of the line, or the tramway, or the canal, as the case may be, is for the public benefit; and the powers which are given to companies of that kind, such as the power of compulsory purchase of land, are

all given on the footing that" the companies are doing a public benefit and yet they are commercial companies."

7. It may be seen, therefore, that in that case notwithstanding the fact that the company was a public utility concern, and was doing a public benefit, inasmuch as there was provision for payment of dividend, though subject to a limit, it was a profit earning company and, therefore, a commercial concern and not a public authority. As to this decision. I need only say that it was given long ago, and that since then the concept and province of Government and strictly Governmental functions have far and long outstripped their original limits in nature and content and expanded into spheres unknown then. The law as a social instrument cannot be unmindful of the progressive changes in outlook all round and through the times in many matters of State and Municipal activities. It may, of course, be right even today that, statutory origin notwithstanding, a corporation or authority whose object is solely or primarily gain, will not be regarded as a public authority. Statutory powers of and incidental public benefit by such a corporation or authority will make no difference to its character as a commercial concern. Incidental profit is not, however, decisive and will not by itself deprive a public corporation or authority of its character as such. Neither the approach nor the test of 1900-1 Ch 749 can be applied to modern conditions without reference to these considerations. *Firestone Tyre and Rubber Co (S.S.) Ltd. v. Singapore Harbour Board*, 1952 AC 452, illustrates, as I think, the departure from the old view and holds that the Harbour Board, a statutory creation authorised to carry on business of warehousemen, was, in taking the appellant's goods under a contract into its custody for delivery to them, doing an act in pursuance of a public duty or authority. Public Authorities Protection Ordinance of Singapore was analogous to the English Public Authorities Protection Act, 1893. It was admitted throughout on behalf of the appellants that the Board was a public authority and the only question decided was what I mentioned. Observed the Privy Council:

".....the existence or non-existence of a contract is not a decisive test, and on the facts of the present case their Lordships are clearly of opinion that the question of contract is immaterial to their decision since, on any view, the board were exercising their permissive powers to perform a normal function of a harbour board and in so doing were providing a service essential to the shipping and commercial community of Singapore and accordingly entitled to the protection of the Public Authorities Protection Ordinance". Lord Tucker who spoke for the Judicial Committee referred to *Bradford Corporation v. Myers* 1916 1 AC 242 and *Griffiths v. Smith*, 1941 AC 170, and quoted from the former:

"What causes of action fall within these categories (i.e., in S. 1 of the Public Authorities Protection Act) it may be very difficult to say abstractly or exhaustively..... But just as it is not difficult to tell a heap when it is seen, so it may be easy at least to say of certain acts that they are not the immediate and necessary outcome of duty or authority in a particular case....." and from the latter:

"I doubt whether it ever will be possible to lay down some general principles by which all cases can be tested."

Nevertheless, Lord Tucker extracted from them the following matters and considerations that are relevant to, though not necessarily always decisive of, the issue:

"1. It is essential to the protection afforded by the statute that the act or default in question should be in the discharge of a public duty or the exercise of a public authority. This assumes that there are, duties and authorities which are not public (see per Lord Buckmaster in the *Bradford Corporation* case, 1916 1 AC 242). A. I. E.

2. In deciding whether the duty or authority has this public quality it is sometimes relevant to consider whether it arises out of or is imposed by a contract voluntarily entered into by the public authority with an individual with whom it is under no obligation to contract.

3. The mere fact, however, that in the discharge of its duty or the exercise of its authority the Public authority may have made a contract does not of itself deprive the duty or authority of its public quality. The existence or absence of a contract is not a decisive test (see per Lord Shaw in the *Bradford Corporation* case, 1916 1 AC 242).

4. Effect must be given to the word "authority". This excludes the test of obligatory, as opposed to permissive powers (See per Viscount Maugham in *Griffiths* case, 1941 AC 170).

Each case will have, therefore, to be decided on its own facts and the relevant provisions. The list of instances of public authorities held to be such and given in 30 Halsbury's Laws of England, 3rd Edn. paragraph 1318, brings out the range of difference which includes the Bank of England, and the Milk Marketing Board. The British Transport Commission has been statutorily recognised as a public authority. In *Welsh v. Bank of England*, 1955 1 All ER 811, Harman, J. referred to 1900 1 Ch 749 but held that having regard to the terms of the Bank of England Act, 1946, the Bank of England was not a profit-making company but was a public authority as explained in 1916 1 AC 242, namely, a body having public or statutory duties to perform. On facts, the action was by a constituent of the Bank for an order directing it to rectify the register of holders of stock by restoring thereto her name on the ground that the plaintiff's name was wrongfully removed from the register of certain documents forged by a joint holder. The Bank's defence, inter alia, was based on Section 21 of the Limitation Act, 1939, which re-enacted Section 1 of the Public Authorities Protection Act of 1893. It was held that the section applied but the time had not run out. Harman, J. being of the view that the keeping of the register of consols was clearly a public duty enjoined on the Bank of England.

8. Sri Nambiar contends that whether a company or corporation is a public

authority will depend on the answers to the questions (1) whether it is controlled by the Government by or under a statute, (2) whether it is incorporated by a special statute and (3) whether its functions are in part or whole functions of the Government. While these tests need not necessarily be cumulative, the last test is an obvious one and may by itself show the public character of the body. Governmental functions in this connection will of course comprehend as contemplated by Article 19(6)(ii) and 298 of the Constitution.

"carrying" on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise". By the second test, learned counsel apparently wanted to distinguish companies registered under the general statutory provisions. Except for that, there appears to be no further significance in the special statute in the context of the public character of a company. Incorporation by a special statute does not ipso facto invest the company with the quality of a public authority.

I agree with the learned Advocate-General that the statutory origin, whether by special statute or not, is not decisive in any sense. The test of Government control suggested by Sri Nambiar appears to be somewhat vague, for its forms, manner and purpose may indefinitely vary from nothing to everything. The degree and content of such control may, however, be a relevant matter to be taken into consideration. Broadly speaking, these tests will, I think, be of assistance in determining the public character of an authority or body, though they are not exhaustive of all the attributes and do not constitute a definition.

9. Cases have been decided in this country relating to the Universities, the Life Insurance Corporation of India, the State Bank of India itself and certain other bodies. The University of Madras Vs. Shantha Bai and Another, was an appeal arising out of a petition under Article 226 for Mandamus, the point for determination being whether the directions issued by the University to the affiliated colleges not to admit girl students without obtaining the permission of the Syndicate were valid. Subba Rao, J., as he then was answered it in favour of the University but issued a rule on the view that the directors were opposed to Article 15(1) as discriminatory against the petitioner on ground of her sex. "State" for purposes of that Article is defined by Article 12 as "the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." On the question whether the University could be held to be "local or other authority", Rajamannar, C. J. and Venkatarama Aiyar, J., (as he then was) observed:

"These words must be construed "ejusdem generis" with Government or legislature and so construed can only mean authorities exercising Governmental functions. They would not include persons natural or juristic who Cannot be regarded as instrumentalities of the Government. The University of Madras is a body corporate created by Madras Act VII of 1923, It is not charged with the

execution of any Governmental functions; its purpose is purely to promote education."

This decision turned therefore, upon the language and collocation of Article 12 in Part III of the Constitution and can have, in my opinion, no application to a determination of the scope of "authority" in Article 226.

In the matter of G. A. Natesan, In re, ILR 40 Mad 125 : AIR 1918 Mad 763 a case u/s 45 of the Specific Relief Act, a Division Bench of this Court issued a rule against the Syndicate of the Madras University on the view that "The Syndicate is a statutory body of persons holding a public office" within the meaning of the Section. *Dipa Pal Vs. University of Calcutta*, , was a case of certiorari granted against the Calcutta University. *G.P. Singh Vs. The Faculty of Law, University of Allahabad and Another*, refused mandamus only on merits. In *Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others*, , the Supreme Court quashed an order of termination of service passed by the Benaras Hindu University. *University of Ceylon v. Fernando*, 1960 1 All ER 631, arose out of an action for a declaration which was granted by the Privy Council on appeal. *S.B. Dutt Vs. University of Delhi*, was a peculiar case involving an arbitration award which the Supreme Court quashed on the ground that a contract of personal service was not capable of an order for specific performance.

G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another, was concerned with the question whether a public corporation like the Life Insurance Corporation of India was a department of the Government in the context of Article 191(1)(a) of the Constitution which says that a, person shall be disqualified for being chosen as and for being a member of the Legislative Assembly or the Legislative Council of a State if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder.

The propriety of the rejection by the Returning Officer of the nomination of the election petitioner was questioned and the Election Tribunal held that he was under no disqualification to stand for election, it being of the view that an employee of the Life Insurance Corporation of India could not be said to hold an office of profit under the Government of India. It was this decision that was under challenge on appeal before this Court. The learned Advocate General appearing for the appellant submitted that the reasoning of the Election Tribunal failed to notice the recent trend of Government administration particularly in the postwar modern welfare States and that it attached too much importance to the form ignoring the substance. He further urged that the Union and the States had under the Constitution a right to carry on business as part of their Governmental functions and that this was implied or inherent in the social objectives envisaged as the ideal which the Constitution holds up. The Court, however, held that the phrase "office of profit" in Article 191(a) could not be construed in the wide *sensu* urged by the learned Advocate General. The learned Judges referred to certain criteria for deciding whether a public corporation like the Life Insurance

Corporation of India was a department of the Government, namely, the incorporation of the body, the degree of control exercised by the Government, the degree of dependence of the Corporation on the Government for its financial needs and the functional aspects of the Corporation. In doing so, reference was made to the principles of administrative law by Griffith and Street and particularly this passage: -

"It may be said that there are several criteria which from time to time the Judges have thought relevant. These include: Is the body performing tasks formerly carried on by private enterprise? (*Mersey Docks and Harbour Board Trustees v. Gibbs*, (1866) LR 1 HL 93. To what extent it is subject to ministerial control, for example, has it" independent discretionary powers (*Metropolitan Meat Industry Board v. Sheedy*, 1927 AC 899 at p. 905). Must it consult a Minister before it acts? Can a Minister give his direction? Is its function one which has historically been regarded as governmental? *Lane v. Cotton*, 1701 1 Ld. Raym 646. Is it incorporated? Is it subject to Government audit? Is its authority general or local? Is it a mere domestic body? (*Powell v. Pratt* 1936 LR 2 KB 226). Is execution against its property allowed? Although *Tamlin v. Hannaford*, 1950-1 KB 18 does not lend particular support to the view it is submitted that the degree of control exercised by the Government over the body ought to be the determining fact." and also to an article captioned "Nationalisation in Legal Perspective" in "The Current Legal Problems" 1952, by Professor Scammel regarding the exact constitutional position of the Public Corporations created for carrying on nationalised undertaking in which the following passage is of interest:-

"The exact constitution position of the national corporation in charge of the nationalised undertakings has not yet been fully settled. That question is likely to be of some practical importance in connection with the extent to which judicial control can be exercised. It has been suggested that they fall somewhere between Government department and local authorities. On the one hand 1950 1 KB 18 decided that they do not rank as Government department; whilst, on the other hand, they are more closely linked with the Government through their parent Minister than are local authorities whose members are elected and who are not subject to receive general directions from a Minister. It is, at any rate, now clear, that being neither servants nor agent of the Crown and their functions not being such as fall within the province of Government, they do not share in the privilege and immunities of the Crown. They are, however, public authorities, and in addition, many of them are given special statutory privileges....."

G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another, did not decide whether the Life Insurance Corporation of India was a public authority but it only held that it was not a department of the Government. If I may say so with due respect, the learned Judges said a good deal, as already indicated, on the characteristics of a public Corporation and its position in constitutional law. In *K.P.C. Menon Vs. Divisional Manager, Life Insurance Corporation of India, Coimbatore*, , *Rajagopala Aiyangar, J.*, as he then was, while holding that the

termination of the service of the petitioner in that case under Regulation 20 was competent and valid and in accordance with the terms of the appointment rejected an alternative argument presented by the learned Advocate General, namely, that the termination of the employment was not justiciable and would not be subject to the jurisdiction of this Court under Article 226, because the employment under the Life Insurance Corporation was not different from that under a private employer and that failure to observe the regulation might enable the employee to seek relief by way of damages in an ordinary civil action, but that he could not move this Court to set aside the order of termination of employment by the issue of a writ of certiorari. The learned Judge observed: -

"I should not be taken to assent to the proposition in such wide terms. In the decision in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, , this Court has held that a disqualification provided for by the Regulation of the Corporation was a disqualification under a law made by Parliament under Article 191(1)(e) of the Constitution. If a Regulation were such a law, and there is no doubt either that the Life Insurance Corporation is a public authority and if there was a violation on the part of such public authority to observe a law, I would be inclined to hold that a violation of the law contained in such a regulation could be the subject-matter of proceedings in this Court under Article 226 of the Constitution and that a suitable remedy could be afforded to the person who had been injuriously affected by a violation of such a statutory provision."

The question of justiciability in the instant case will be considered separately but I have quoted the above passage only to show that the learned Judge with reference to the criteria mentioned in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, , was prepared to hold the Life Insurance Corporation to be a public authority. The Life Insurance Corporation of India again figured in *S. Vaidyanatha Iyer v. Life Insurance Corporation of India*, W. P. No. 1016 of 1958 D/- 6-4-1960 (Mad), in which the petitioner's appointment by the Corporation as a Field Officer was unsuccessfully challenged. The learned Advocate General appearing for the Corporation objected to the maintainability of the petition under Article 226 of the Constitution on the ground, among others, the Life Insurance Corporation was neither a State nor a public authority to which a writ would issue. Rajagopalan, J., who was a party to *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, considered that it was sufficient authority to repel the objection and added that although the question whether the Corporation was a public authority to which a writ of mandamus could issue did not arise for express determination in that case nonetheless, he and Rajagopala Aiyangar, J., as he then was, had no doubt that the Corporation was a public Corporation and a public authority. Rajagopalan, J., nevertheless went into the question over again and felt that there was no reason to come to a different conclusion. Observed the learned Judge;

"It is a Corporation wholly owned, financed and controlled by the State. Though in its day to day administration it enjoys a large measure of autonomy, the

Corporation has public and statutory duties to perform, and it performs those duties and carries out its transactions for the benefit of the public and not for the profit of any private individual."

K. T. Desai, J., in *Christopher Pimenta and Others Vs. Life Insurance Corporation of India*, , was of the same opinion. He said -

"The Corporation is a Public Corporation. The acts purported to be done by the Corporation and by the Central Government are those done in the purported exercise of the statutory powers purported to have been conferred upon the Corporation and the Central Government. I do not see why the petition for the issue of a writ does not lie. Section 45 of the Specific Relief Act in terms lays down that an order can be made under that section against a Corporation when the doing or forbearing of any act is under any law for the time being in force, clearly incumbent on such corporation in its corporate character."

The learned Judge on that view dismissed the preliminary objection to the maintainability of the petition under Article 226 of the Constitution which was a petition challenging the power of the Life Insurance Corporation and the Central Government to alter the conditions of services of the insurer units taken over by the Corporation. In *Corporation of the City of Nagpur Vs. The Nagpur Electric Light and Power Company Ltd.*, , it was held that the Nagpur Electric Light and Power Co., Ltd., as a statutory body charged with statutory duties was a public authority subject to the jurisdiction of Article 226. The Calcutta High Court in *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, , issued mandamus to the *Baleshwar Prasad Vs. Agent, State Bank of India*, , held that an employee of the State Bank of India was not a civil servant of the Union Government and, therefore, Article 311 had no application to his case. That was a case of termination of service for misconduct and no preliminary objection as to the maintainability of the petition on the ground that the State Bank of India was not a public authority appears to have been urged in that case. *Suprasad Mukherjee Vs. State Bank of India and Another*, to which Sri Nambiyar calls my attention, goes no further than the *Patina* case. I have adverted to these decisions as furnishing instances, in a few of which statutory corporations have been held to be public authorities in the context of particular incorporating statutory provisions.

10. To sum up my conclusions from the foregoing discussion, it is neither possible nor expedient to formulate an abstract and exhaustive definition of a public authority. Each case will have to be decided in the light of the particular statutory provisions, their scope and nature, but in coming to a conclusion on the question, certain matters, among others, may be relevant and important for consideration. Governments, Departments of Governments, Municipal authorities and Local bodies present no difficulty. They are undoubtedly public authorities. Other statutory bodies like Corporations incorporated by special enactments cannot be regarded as not public authorities merely on the ground that they cannot be likened with those obviously public authorities. The functional aspect

as to statutory or public duties discharged by a body pursuant to statutory or other provisions having the force of law, the nature of such functions including not merely Governmental or quasi-Governmental functions strictly so viewed but in a wider sense, the carrying on by the State or by a Corporation-owned and controlled by the State of any trade, business, industry, or service, the extent and content of the control exercised by the Government, are among the more important criteria. Statutory origin of the authority may not be conclusive. Nor the public benefit or the public purpose for which a body has been statutorily brought into existence will be totally an irrelevant consideration. A body which is established solely for the purpose of gain may not be the necessary test of a public authority but incidental profit or gain may not negative that character.

11. Having regard to the said considerations, is the State Bank of India a public authority? The preamble to the State Bank of India Act, 1955 sets out its objects, namely, the extension of banking facilities on a large scale more particularly in the rural and semi-urban areas and for diverse other public purposes and to transfer to the State Bank the undertaking of the Imperial Bank of India. Section 3 establishes the State Bank of India to carry on the business of banking and other business in accordance with the provisions of the Act and for taking over the undertaking of the Imperial Bank. The Bank is to be a body corporate with perpetual succession and, a common seal.

Sections 4 and 5 provide for authorised and issued capital. It is to be noted that increase or reduction of the authorised capital of 20 crores of rupees can only be done by the Central Government. Further a specified issued capital of the State Bank stands allotted to the Reserve Bank in lieu of the shares of the Imperial Bank transferred to and vested in the State Bank. Any increase of the issued capital is controlled by the Reserve Bank subject to the further provision that no increase in the issued capital beyond 12 crores and fifty lakhs of rupees shall be made without the previous sanction of the Central Government. The Reserve Bank shall at all times have not less than 50 per cent of the shares and by Section it individual holdings are restricted.

By Section 13, the Bank shall keep at its central office a register of shareholders containing the prescribed particulars. Unless otherwise provided by the Central Government by notification, the central office of the State Bank is to be at Bombay. The State Bank is enjoined by Section 16 to open local head offices as well as open and maintain its branches. Section 18, which is important, says that

"in the discharge of its functioning including those relating to a subsidiary bank, the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank give "to it."

The section further provides that

"all directions given by the Central Government shall be given through the Reserve Bank and, if any question arises whether a direction relates to a matter

of policy involving public interest, the decision of the Central Government thereon shall be final."

The Central Government will constitute the first Central Board of Directors. The composition of the Board should be such that eight of the directors should be nominated by the Central Government in consultation with the Reserve Bank to represent and not more than two managing directors will be appointed by the Central Board but with the approval of the Central Government. Apart from these nominations, the Central Government can make one more nomination of a director. A managing director shall hold office for such term not exceeding a certain period as the Central Government may fix.

In the constitution of Local Board and Local Committees too the Central Government is entrusted with powers of nomination of directors to be elected. The powers of removal of the Chairman, Vice-Chairman of the Central Board are vested in the Central Government. The Chairman is to receive such salary as the Central Board may determine with the approval of the Central Government. The Central Government has also got an effective voice in the fixation of remuneration to the Vice-Chairman. The Bank, among its other duties, should act as the agent of the Reserve Bank of India, for paying, receiving, collecting and remitting money, bullion and securities on behalf of any Government in India.

The State Bank u/s 40 should furnish to the Central Government and the Reserve Bank within a stated time its balance sheet together with the profit and loss account and the auditors' report on the working of the State Bank during the period covered by the accounts. The auditors also are required to make a report to the Central Government upon the annual balance sheet and accounts and the report should give specific information in respect of particular matters indicated in the section. The Bank shall not be liquidated save by the order of the Central Government. The Central Government is also vested with power to remove any difficulties in respect of certain matters by issuing specific orders and also in consultation with the Reserve Bank and by notification in the official Gazette, make rules to carry out the purposes of this Act.

The Central Board can make regulations only after consultation with the Reserve Bank and with the previous sanction of the Central Government, not inconsistent with the Act and the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Disposal of profits is dealt with by Section 38, which says that

"after making provision for bad and doubtful debts, depreciation in assets, equalisation of dividends, contribution to staff and superannuation funds and for all other matters for which provision is necessary by or under this Act or which are usually provided for by banking companies, the State Bank may, out of its net profits, declare a dividend",

the rate being determined by the Central Board, subject to the provisions of paragraph 6 of the First Schedule.

Having regard to these provisions of the Act, particularly the public purpose which it is meant to serve, the extensive Government control over the bank including several matters of policy, appointment and removal, fixation of remuneration of particular officers of the Central Board and the power of nomination and appointment of directors, the statutory audit subject to Government control, the obligation of the Bank to send returns to the Central Government, the obligation of the auditor also to forward audit reports to the Central Government, and the power of the Central Government to wind up the Bank, there can be no doubt, in my opinion, that the State Bank of India is a public authority. It is also clearly charged with public duties by various provisions of the Act in respect of several matters. It is impossible to say that on ground of the provision for disposal of profits, the State Bank is a commercial concern constituted for gain. The disposal of profits as provided by Section 38 is not the primary object as of the establishment of the State Bank but it is incidental, to the nature of the business transacted by the Bank. I hold, therefore, that the State Bank is a public authority, a corporation within the meaning of Section 45 of the Specific Relief Act and an authority within the meaning of Article 226 of the Constitution. But whether and to what extent it is subject to judicial control or interference with under or outside that Article, is a different matter which I shall immediately proceed to consider.

12. As I said earlier, the learned Advocate General would next contend that even as a public authority, the relationship between the State Bank and the petitioner was but that of ordinary master and servant and the termination of service in this case as a unilateral act of the Bank, as an employer, is not like any other private employer subject to scrutiny under Article 226. At the worst the remedy for wrongful termination according to the Advocate-General, is only to sue for damages for breach of contract of service.

It is true that in this context the composition of a person or body .vested with statutory power, like a Government, a Minister, a Government or public officer or official virtue office or a Board, or Corporation by an Act of the legislature, is not of significance so much as its or his functional aspect for purposes of the Court's jurisdiction to adjudicate rights or control by certiorari or mandamus. It is the kind or nature and extent of power and the manner, occasion and propriety of its exercise in particular contexts and circumstances and the capacity that is more relevant for the purpose. Further, as rightly pointed out by the learned Advocate General, the tests of validity are applied with reference to the particular exercise of power, not to the repository of power generally with reference to all its affairs, because the same authority, officer or body may function differently as the occasion may call for it, as for example, (1) entering into contracts, committing torts like a private individual can do, (2) acting in exercise of statutory power as for his or its own benefit, (3) exercising such powers involving public duties" and (4) functioning as a tribunal. In the first two cases, the discretionary and administrative exercise of power in good faith, apart from questions of capacity or ultra virus will rarely be the subject of interference by Courts, and mandamus

or certiorari in respect of such exercise can never arise.

Instances of interference in the first two classes of cases at the instance of aggrieved parties who complain injury to their rights (not arising: out of contractual obligations)¹ are confined to certain limited grounds, such as, in *Short v. Poole Corporation*, 1926 1 Ch 66, "Powers corruptly exercised"; "influence of bribery"; "mala fide"; "improper purposes" "sinister or collateral purpose", "bad faith", "corrupt motive", "irrelevant grounds", "foolish reason as a man having red hair" or "frivolous, arbitrary, vexatious as giving room for an inference of mala fides" or in *Potato Marketing Board v. Merricks*, 1958 2 QB 316, "abuse of power" or in *Earl Fitzwilliam's Wentworth Estate Co., Ltd. v. Minister of Town and Country Planning*, 1951 2 KB 284, and on appeal *Fitzwilliam (Earl) Wentworth Estates Co. v. Minister of Housing and Local Govt.*, 1952 AC 362, "unlawful purpose" though ordinarily purpose, motive and reason are not regarded but the intrinsic validity.

Most English decisions in this series show that it is for the authority to whom power is granted and upon whom a duty is imposed to decide, and the exercise of its discretion in making the decision will not be reviewed by the Courts and the decision itself will be impugned only if any abuse of power can be shown. If the act is done bona fide and fairly and honestly, the act cannot be challenged. *Smith v. East Elloe Rural District Council*, 1956 AC 736, is a telling instance how strongly the House of Lords adhered to the proposition that so long as the Minister acts within his discretion in confirming a compulsory purchase order under the Acquisition of Land (Authorisation Procedure) Act, 1946, the Courts will not interfere. The House of Lords went so far as to hold that the words in Section 16 of that Act "a compulsory purchase order shall not be questioned in any legal proceeding whatsoever" were wide enough to cover any kind of challenge including bad faith or fraud and considered that to hold otherwise would mean adding "made in good faith" to those words. Lord Reid while agreeing with this view, observed as to the limited jurisdiction of the Court :-

"I think that in the past there has been some confusion about this, and I fear that I must try as best as I can to unravel the matter. It seems to me that there were four grounds on which the Courts could give relief. First, informality of procedure; where, for example, some essential step in procedure had been omitted. Secondly, ultra virus in the sense that what was authorised by the order went beyond what was authorised by the Act under which it was made. Thirdly, misuse of power in bona fide. And, fourthly, misuse of power in mala fide"

and went on to explain what each meant. *Vine v. National Dock Labour Board*, 1956 3 All ER 939 : 1957 AC 488 and *Barber v. Manchester Regional Hospital Board*, 1958 1 All ER 322, deal with breach of contracts of service with statutory bodies. In the first of them Lord Keith of Avonholm said:

"This is not a straightforward 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."

The other case was one of termination of service under terms of a service contract with the statutory.¹ Board. It was found that one of the terms was not complied with and that a breach of contract: was established. In that connection the Court" referred to 1926 1. Ch 66 and observed : -

"The law, I think is clear; in ordinary circumstance, by giving the appropriate notice, a master can terminate his servant's employment and no" one can question the motives of the master in reaching a decision to do so. The position differs somewhat in relation to statutory bodies who can, of course, only act for the purposes for which they are created. A statutory body has, equally an untrammelled right to terminate the services of one of its own employees by giving appropriate notice, provided that decision is arrived at bona fide. As I understand the meaning of the word, it is that: the decision must be reached, and honestly reached, in the belief that it is a decision made in the best interests of the objects of the statutory body namely, in this case, the administration of the health services in the region under the control of o the regional hospital board, and not made for some wholly extraneous reason; an obvious extraneous reason would be shown if it could be proved" that a decision to terminate the employment of a servant was made, not because it was genuinely or perhaps mistakenly thought by the statutory authority that the termination of his services was in the, best interests of the service which they were administering, but because, while knowing that they were not furthering the interests of that service by dismissing him, the statutory authority dismissed!" the servant owing to personal spite against him. Then I think their decision could be impugned in the Courts."

The Court further observed

"The case could not be dealt with as though, it were an ordinary master and servant claim in; which the rights of the parties were regulated" solely by contract. Here despite the strong statutory flavour attaching to the plaintiff's contract I have reached the conclusion that in essence it was an ordinary contract between master and servant: and nothing more and that the plaintiffs" only remedy is the recovery of damages" and proceeded to assess the damages. The learned Advocate General has pressed his. preliminary objection particularly with reference, to these principles and contended that the position in the instant case is no more than that of master and servant governed by contractual terms, notwithstanding the statutory origin of the State Bank, that the termination by notice was bona fide made in the interests of the Bank and in accordance with those terms and that if the petitioner felt aggrieved and alleged wrongful termination, his remedy only lay in damages.

Though this contention seems to have force, I am unable to accept it and dismiss the petition as not maintainable because of the petitioner's case which has to be

examined that the rules relating to his service are statutory and the order of termination being in effect an order of dismissal, it was in violation of those rules. An alternative remedy may influence the discretion of Court but does not limit the wide power under Article 226, which is not confined to particular forms of the English writs and procedure.

13. From the standpoint of mandamus, the exercise of power by the public authority should normally of course involve public duties. It is in the form of a command issued to any public officer, corporation or authority or inferior tribunal compelling him or it to do or refrain from doing a thing which pertains to his office and is in the nature of a public duty. It will be available both against administrative and inferior tribunals. But where, as in the last instance, a statutory authority or body is vested with judicial or quasi-judicial power it acts as a tribunal and the appropriate process is certiorari. It serves to call for or remove the record or order from an inferior Court with a view to correct errors of jurisdiction, the absence, excess or irregular exercise of it or errors of law apparent on the face of the record or order including some of the limited grounds or errors I have listed above while considering the first two classes of statutory powers of a statutory authority and this remedy in view of the later tendency of the legislatures to entrust more and more judicial or quasi-judicial power to authorities or bodies constituted as Tribunals, now extends to keep them within the bounds of the law. *Rex v. Electricity Commissioners*, 1924 1 KB 171 observed:

"It has, however, always been the boast of our common law that it will, whenever possible, and where necessary apply existing principles to newest of circumstances..... As statutory bodies were brought into existence exercising legal jurisdiction, so the issue of the writ came to be" extended to such bodies..... The Court would examine the proceedings of all jurisdictions erected by Act of Parliament, and if under pretence of such an Act they proceed to encroach jurisdiction to themselves greater than the Act warrants the Court could send a certiorari to them to have their proceedings returned to the Court, to the end that the Court might see that they keep themselves within their jurisdiction, and if they exceed it to restrain them..... But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, Courts of justice. Wherever any body or person having legal authority to determine questions affecting the rights of subjects and have a duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

These principles equally govern issues of writs of certiorari or prohibition under Article 226 of the Constitution as well. It is clear that certiorari is directed against a judicial or quasi-judicial acts which tend to or are a determination or decision in a judicial way of rights of parties or questions relating to them such determination or decision "having the effect of binding both the parties. Service cases to which Section 240 of the Government of India Act, 1935 or Article 311

of the Constitution applied seem to be somewhat of an exception, for in a sense the act of dismissal, removal or reduction in rank is eventually an administrative act. The Court looks into the proceedings leading upto the act to see they conformed to the principles of natural justice or essential forms of justice and the law. But even this is done, I think because of the requisites of the protective provisions of Article 311 or other statutory provision, which to that extent, controls the pleasure of the executive on which the tenures of particular civil posts depend.

AIR 1937 27 (Privy Council) was a case u/s 96-B(1) of the Government of India Act 1919, in which the dismissal was held to contravene that provision and was, therefore, bad and inoperative. AIR 1937 31 (Privy Council) had to do with failure to comply with the rules made u/s 96-B(2) of that Act. The Privy Council held that such failure did not give any right of action on the view that the rules amounted only to "a statutory and solemn assurance that the tenure of office, though at pleasure, would not be subject to capricious or arbitrary action, but would be regulated by rule."

But in the AIR 1948 121 (Privy Council) the Board pointed out that the requirement of giving a reasonable opportunity of showing cause against the action proposed, which formerly rested on the rules made u/s 96-B(2), remained no longer so but was made by Section 240(3) of the Government of India Act, 1935, mandatory and that this requirement necessarily qualified the pleasure of the Crown. If this requirement was not followed, held the Judicial committee, the purported dismissal was "void and inoperative" and there would be a declaration that the Government servant remained a member of the service at the date of the institution of the action. Though these cases arose out of suits, these principles apply to Article 311 of the Constitution in cases coming up under Article 226. The effect of treating the dismissal void is that the order was a nullity and never existed in the eye of law. It is in that sense the Court quashes the order. See *Craig v. Kansen*, 1943 1 KB 256 where an order considered to be void, was, nevertheless, set aside. *Kofi Forfie v. Barima Kwabeng Seifah*, 1958 AC 59, is another illustration on the point.

14. In this background the learned Advocate General asks what is the statutory duty of the State Bank quod its order of termination of the petitioner's service which he can properly compel the Bank to discharge, and what is the decision; here of the bank rendered in a quasi-judicial capacity such as to attract certiorari? Sri Nambiyar's answer is that these questions do not necessarily affect the maintainability of a petition under Article 226 of the Constitution.

I think his contention is right. The petitioner comes to this Court charging that the termination order is really a dismissal, that the State Bank of India (Sub-Accountants and Head Cashier) Service Rules were statutory rules and that the order of dismissal because of its failure to conform to the statutory rules which provide for a quasi-judicial jurisdiction and procedure and the principles of natural justice, is a nullity. If the petitioner is unable to establish these grounds,

the petition has to be dismissed as a result but not on the ground of maintainability of the petition.

Article 226 of the Constitution is not confined to the particular forms of writs obtained in England and mentioned in the Article but covers a much wider ground and jurisdiction. It will not, therefore, as already observed at the outset of the judgment, be proper to understand and interpret the scope and ambit of Article 226 and the nature, width and content of the powers conferred by that Article, in the light or by application of the English principles of the Court's jurisdiction either in actions or writs or other proceedings. In my opinion, having regard to the language of the Article, and the variety of matters which it may comprehend and the purposes, which are not defined, for which directions could be given under the Article no question of maintainability of the petition as such under the Article could normally arise and the grant or refusal of a petition under the Article will largely be a matter of discretion undoubtedly vested in the Court. I am, therefore, unable to uphold the preliminary objection raised on behalf of the respondent.

15. In the circumstances, I permitted the petition to be argued on merits. Before dealing with the three points formulated by Sri Nambiar since they proceed on the assumption that the order of termination was virtually an order of dismissal for misconduct, it is necessary to immediately consider this aspect. If the order is not one of dismissal for misconduct but one of termination under the terms of the contract of service, there will then be no need to deal with these points, because *ex facie* the order of the Bank purports to be one terminating the petitioner's service in terms of clause 1 of the petitioner's agreement in service with the Bank dated 12-8-1958. The order no doubt referred to the conclusion of the Local Board that the petitioner was guilty of misconduct which deserved extreme penalty of dismissal from service. But the order shows expressly that the Local Board did not propose to put that conclusion to effect and dismiss the petitioner from service. The reason for this is said to be grounds of compassion. Apparently by that the Board had in mind the petitioner's long and unblemished service. In view of such ground of compassion, the Board resolved to terminate the petitioner's services by giving him two months' salary in lieu of notice as in effect provided for in the agreement for service and terminated his services with effect from the date of the order. It is plain, therefore, that the termination was not by way of punishment but in exercise of the right of the employer under the terms of the service agreement to terminate the service by notice. It may be that the proceedings in the enquiry of the charges against the petitioner and the report of the enquiry that followed as well as the Board's conclusion that the petitioner's misconduct deserved the extreme penalty of dismissal - all these were relevant to and possibly presented the occasion but not provided the basis for termination. If they formed any basis at all, for any action to be taken, the order itself made it manifest that the action should have taken the form of dismissal of the petitioner from service. Further the order itself did not categorically mention that The Local Board agreed with the findings of the

enquiry and report and that each of the charges framed against the petitioner was proved, though the board had come to the conclusion that although the petitioners misconduct deserved the extreme penalty of dismissal, it would not be proper to impose that penalty upon him.

It cannot, I think, be said, that, whenever termination of service purporting to be under the terms of contract for service was preceded by framing of charges and an enquiry against the alleged delinquent officer, the termination should necessarily be held to be in effect a dismissal. It is quite possible that while the employer being of the opinion that misconduct had been established, he would not pursue it to a punishment like dismissal or any other but nevertheless and without regard to it, would like to terminate the service legitimately taking advantage of one of the enabling terms of the contract of service relating to termination of service by notice. Reference has been made by Sri Nambiyar to cases arising out of labour awards holding termination in certain circumstances to be, in fact, a dismissal from service either on account of motives of victimisation or other corrupt labour practice, but I do not think that they are of assistance in deciding the instant case. In my opinion, there are not circumstances in the instant case to warrant such a conclusion that the order of termination is one missal I hold that the petitioner services was terminated by he Local Board in Local Board in exercise of its right as an employer under clause I of the service agreement providing for termination of service by two months notice.

16. But it is contended for the petitioner that even so, the termination of service was in violation of Rule 14 of the State Bank (Sub-Accountants and Head Cashiers) Service Rules, and the terms of the agreement. For the purpose of this argument, I shall assume that these rules are statutory. Rule 14 so far as a Head cashier is concerned, is to the effect that his service "may be terminated by the Bank giving him such notice or such amount in lieu of notice as may be prescribed in his agreement for service with the Bank." Clause 1 of the agreement dated 12-8-1958, which the petitioner had entered into with the bank provided "such service determinable on either side by two calendar months" notice to that effect as hereinafter provided." There is no further provision in the agreement to pay two months" salary in lieu of two months" notice on terminating petitioner"s service. Upon this ground Sri Nambiar urges that the petitioner"s services can be validly terminated only by a strict adherence to clause 1 of the agreement, namely, by giving him two months" notice and not by paying him two months" salary in lieu of such notice.

In terms of Rule 14, if there is anything like a violation, this will, I think be only in breach of the actual terms of the service agreement but not necessarily a violation of the rule, though, the rule provides that the service of a Head cashier may be terminated by giving him such notice or such amount in lieu of notice as may be prescribed in his agreement for service. On that view, neither mandamus nor certiorari will be an appropriate remedy, as a breach of an agreement can

only found in damages. But I go further to find that the particular mode of termination by payment of two months' salary in lieu of two months' notice is not, as I consider, in violation of clause i of the service agreement. Just as a private employer cannot compel the personal service of his employee, conversely an employee can not normally insist upon the employer to continue him in service during the notice period notwithstanding his desire to terminate his service.

There may be circumstances in which the employee may be prejudiced in terms of not only salary but emoluments attached to his office" by termination of service without allowing him to serve during the notice period. But this is not such a case, and the same principle should apply to a statutory authority in its capacity as an employer, unless there is something inconsistent in the statute or statutory rules. The petitioner was paid not merely two months' salary but also allowances pertaining to that period. I think, therefore, that termination of the petitioner's service in that manner was in substantial compliance with clause i of the service agreement. This view of mine seems also to be supported by *Konski v. Peer.*, 1915 1 Ch 530. The service agreement in that case provided

"Your employment is to commence on the 25th April 1914, and to be subject to termination by a week's notice on either side and also to the terms and conditions of service....."

The employer discharged the employee from service by paying her a week's wages in lieu of the week's notice and a certain sum as gratuity ignoring the desire of the employee to continue in employment until the expiration of the week's notice. The Court held the termination not wrong and observed:

"In my opinion he (the employer) had discharged the obligation which he had undertaken under his agreement by paying her the salary which he agreed to pay, and if he chose to pay her salary and dispense with her services at the same time he was entitled to do so ."

It was also pointed out as noteworthy that the employment under the service agreement was not to last for any fixed period in which case alone an earlier termination could be said to be in breach of the agreement. The result of my finding is that the order of termination of the petitioner's service is not shown to be an order of dismissal or in violation of any statutory rule or even the terms of the service agreement.

17. On that view, no question, of dismissal in violation of the service rules or the principles of natural justice will be relevant or will arise. The alleged violation of the service rules is based on the supposition that the service rules are statutory rules and that the charges framed against the petitioner could not be properly said to infringe Rules 33 and 36 and that in any case, the procedure prescribed by Rule 40(2) of the rules applicable to enquiries into misconduct, including the procedure of second notice under clause (4) of the rule has not been followed. I doubt very much whether the State Bank of India (Sub-Accountants and Head

Cashiers) Service Rules have statutory effect. I am inclined to hold that they are not statutory rules and do not have the force of law. The rules themselves do not indicate the source of their authority.

Sri Nambiar's contention is that if rules should be made and are made, they should be related to the enabling power in the statute. As a proposition, no one can demur to its validity. But the question is whether these Rules have been made in exercise of any statutory power enabling framing of Rules. Section 50(1) confers power upon the Central Board of the State Bank of India to make regulations, after consultation with the Reserve Bank and the previous sanction of the Central Government, not inconsistent with the Act or the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. By Sub-section (2) of the same section particular matters are mentioned with reference to which or in regard to which the Central Board can make regulations. None of those matters pertains to appointment or conditions of service. The requirement of consultation with the Reserve Bank; and the previous sanction of the Central Government and the need to conform to the provisions of the Act and the rules made thereunder would seem to indicate that the regulations are not meant to cover terms and conditions of service. The specific power to make rules is in Section 49 conferred upon the Central Government and this power too does not touch upon the service conditions and terms. The only other section to which my attention was drawn is Section 43 which states:

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

This obviously, to my mind, is not a rule making power. The section only empowers the State Bank to appoint its officers, advisers and employees, their number depending upon the necessity or desirability for the efficient performance of Bank's functions. The further power of the State Bank under the section which is related and incidental to the power to make appointments, is the power to determine the terms and conditions of the appointment and service. There is nothing to prevent the State Bank of India from fixing such terms and conditions and changing the same from time to time at its discretion. The power u/s 43 enables the Bank no more than to fix the term and conditions of service by entering into service agreements or otherwise in relation to the officers, advisers and employees appointed by it. There can, therefore, be nothing statutory about or in the determination of the terms and conditions of the service. Such determination of the terms and conditions does not have the effect of making the rules have the force of law. It is under this section the State Bank is enabled to enter into service agreements with its employees.

It cannot be said that wherever a statutory authority acts under or in exercise of a power statutorily given to it, such act has the force of law. For instance, no one

will say that the terms and conditions of a contract entered into by a statutory body in exercise of its statutory contractual power constitute anything more than a contract. Those terms and conditions cannot be treated as rules having the force of law. The State Bank of India (Sub-Accountants and Head Cashiers) Service Rules may be the terms and conditions, among them others, which govern the employees of the State Bank that they do so not as statutory rules having the force of law. On this view again, the contention of the petitioner that he was dismissed in violation of the service rules cannot be enquired into in this petition under Article 226 of the Constitution.

If I am wrong, in my view of the effect of the service rules and the finding that the termination is not one of dismissal, there may be, I think, some force in the contention that the charges as framed, even granting that they were made out, would not be a violation of Rules 33 and 36 and that there may also be something to be said in favour of the contention that the dismissal was in violation of the principles of natural justice. That was the impression I gathered while I was taken through the record of enquiry. At the same time, I should say that as seen from the entire record, the Bank in terminating the petitioner's services acted bona fide and in the interests of the Bank. But in the view I have taken, namely, that it is a case of termination of service in terms of the service agreement, it will be totally unnecessary for me to express my final opinion on the other matters.

18. The petition fails and is dismissed but in the circumstances without costs.