

(1997) 12 MAD CK 0177

In the Madras High Court

Case No : W.P.No. 11862 of 1996 and W.M.P.Nos. 16009, 160010 and 20395 of 1996

V. Sadasivan and 36 others

APPELLANT

Vs

Binny Limited and another

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 226, 39

Contract Act, 1872 — Section 23

Industrial Disputes Act, 1947 — Section 12(3), 18(1), 2, 25

Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978 — Rule 31(v)

Citation : (1998) 1 CTC 1 : (1998) 79 FLR 97

Hon'ble Judges : Man Mohan Singh Liberhan., C.J;D. Raju, J

Bench : Division Bench

Advocate : Mr. N.G.R. Prasad, for the Appellant; Mr. P. Ibrahim Kalifullah, for the Respondent

Judgement

Judgement Pronounced by Raju, J.—The above writ petition has been posted before the Division Bench on the directions of an earlier Division Bench dated 30-4-1997 issued, while disposing of Writ Appeal No. 221 of 1997 and C.M.P. Nos. 3782 and 4809 of 1997. The said writ appeal itself came to be filed against the order of a learned single Judge dated 21-2-1997 in W.M.P.No. 20305 of 1996 in W.P.No. 11862 of 1996.

2. (a). W.P.NO. 11862 of 1996 has been filed seeking for the issue of a writ of declaration, declaring that clause 8 of the Agreement read with the orders of termination dated 31-7-1996 issued by the second respondent to the petitioners are void and illegal being violative of Section 23 of the Indian Contract Act, 1872, Article 21 of the Constitution of India and Sections 25-F and 25-N of the Industrial Disputes Act, 1947 and consequently direct the respondents to reinstate the petitioners with continuity of service with all arrears of salary or in the alternative direct the respondents to pay 3.3 years salary with 18% interest

from 31-7-1996. The case of the 37 writ petitioners as projected in the common affidavit filed in support of the writ petition is that they were all employed in B & C Mills" said to be a unit of the respondent-company, that on one day, the second respondent terminated their services under Clause 8 of the Agreement which stated that the management can terminate the service of an employee by just giving one month's notice or salary in lieu of notice and that such termination was effected despite the alleged blemishless service rendered by them ranging from 10 to 37 years. While claiming to have filed this writ petition for declaring Clause 8 of the Agreement to be illegal and contrary to the provisions noticed earlier and have as a consequence thereof, the orders of termination set aside and obtain consequential reliefs as noticed earlier, it is further stated that the B & C Mills is nearly a century old and that it had been a source of employment to thousands of workers besides providing indirect employment to many. According to the petitioner whenever, the respondents-company faced any difficulties, the Central Government, State Government and Public Financial Institutions have come to their assistance to avoid social set backs and upheaval that it may cause to the hundreds of families employed in the said Mills and that there were two broad categories of workmen in the Mills called Operatives and Staff, the first category relating to those who are involved directly in the production and the second category relating to Staff, who do clerical work and allied work. The petitioners claim to have joined the respondent-Mills as Clerks, Machine Overlookers, Supervisors, etc. and their work is stated to be mainly of a clerical nature and that they were workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act" It is further claimed that from 1981 onwards, the management started insisting on the petitioners being designated as management staff with the sole object to avoid payment of overtime wages and that though they signed the agreement with the management, they continued to perform the same duties as before. The agreement relating to the service conditions, it is claimed, was signed in order to avoid incurring displeasure of the management since they were also assured that they will not lose anything including their employment.

(b) The petitioners state that the re-designation/promotion as "management staff was intended to avoid application of the Act to them who were "workmen" under the Act, that the nature of their duties continued to be the same notwithstanding the change in nomenclature and that before terminating their services there should have been proper compliance with Section 25-N of the Act by taking prior permission and also complying with the requirements of Section 25-F of the Act. The further plea on behalf of the petitioners is that even assuming that they belong to the management category staff, clause 8 of the Agreement, which provided for termination of their services without assigning any reasons and by just giving one month's notice or salary in lieu thereof, is obnoxious, arbitrary and opposed to public policy as held by the Apex Court in the decisions reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Delhi Transport Corporation

Vs. D.T.C. Mazdoor Congress and Others, . It was also stated that the respondent-Mills went before the Board for Industrial and Financial Reconstruction (B.I.F.R.) in the year 1992 and a Scheme was framed for running the Mills and on 12-1-1996, the (BIFR) stated that the respondent- Mills are out of the provisions of that Act because they are no longer sick and for that reason also, the termination of the services of the petitioners becomes even more monstrous. It is also claimed that about 14 employees as disclosed in paragraph 10 of the affidavit, who are said to be juniors to the petitioners, are allowed to work and that this violates the principle of "last come first go" also and contrary to the provisions of the Act. The petitioners also claimed that the so called promotion accorded to them as management staff is nothing but a re-designation and simplicitor since they continued to perform the same duties as hitherto before such promotion and consequently, they continued to be workmen as defined u/s 2(s) of the Act and, therefore, the certified standing orders will continue to apply to them. On that account, it is claimed that the Standing Orders do not permit the termination of the services of a permanent employee without a reasonable cause. Reliance is also placed on the decision of a Division Bench of this Court reported in Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others, to claim that a writ could be issued even against a private body to protect the fundamental rights declared under Part III of the Constitution of India and that a writ will also issued against a private body if there is no equally convenient remedy. Mass scale termination having recourse to a clause like clause 8 of the agreement, a similar clause like one having been struck down by the-Supreme Court justifies the invoking of the extraordinary jurisdiction under Article 226 of the Constitution of India. The violation of a statutory provision by any private body is also said to justify the issue of a writ against such a private body.

3. The respondents have filed a counter affidavit contending that the petitioners are not workmen within the meaning of Section 2(s) of the Act, that the B & C Mills has been incurring losses in the last several years and in fact in the year 1990-91 the Mill came to a grinding halt and the respondents had to take enormous efforts to bring in fresh funds to revive the operations in the mills. It is claimed that the Mills could not be run to its optimum capacity or in a viable manner and that as against the performance of 1,80,000 metres per day, it never went beyond 1,40,000 metres and in the beginning of the year 1996 it came down to as much as only 85,000 metres per day. The Mill also was said to have become non-operational due to flood water which entered into the Mill and it is stated that the respondents could not give employment to its permanent labour force of 3,500 workmen and 214 clerical staff. While stating that there is no activity in the Mill after 12th June, 1996 and the operation of the Mill had to be suspended from 15-6-1996, the Mill was said to have faced a situation with no other option than to dispense with the services of the management personnel whose services were unable to be gainfully or effectively utilized and this resulted in passing of the orders of termination dated 31-7-1996 invoking clause 8 of the

service agreement entered into between each one of the petitioners and the respondent-management and consequently the termination is said to be perfectly justified and valid in law. The writ petition is also said to be not maintainable against the respondents the same being a private company registered under the Companies Act and not being a state or instrumentality of a State or public authority. On that basis, it is contended that the writ petition is not maintainable and consequently no declaration as prayed for could also be granted in this writ petition against the respondents. For the very same reasons, it is stated that if, as claimed by the writ petitioners, they are workmen, their right is to have recourse to the remedies provided under the Industrial Disputes Act and in the teeth of such existing effective alternative remedies, the jurisdiction under Article 226 of the Constitution of India could neither be invoked nor be exercised at the instance of the writ petitioners. It is contended that the question as to whether the petitioners are workmen or not within the meaning of Section 2(s) of the Act could be answered only on the basis of the evidence to be let in by both parties and the findings in respect of the same is a question of fact to be arrived at on an appreciation of such evidence and, therefore, such question cannot be projected or agitated in these proceedings under Article 226 of the Constitution of India. While advertent to the claim for declaring clause 8 of the service agreement to be illegal, it is stated that such relief could be sought for only before the Civil Court and even assuming that clause 8 is not valid in law, the petitioners can only challenge the termination as wrongful and could claim only damages for such wrongful termination they being not workmen, and consequently, the writ petition as framed is misconceived in law. Repeatedly it is urged in the counter affidavit that the petitioners are not workmen within the meaning of Section 2(s) of the Act, and that, therefore, no relief could be sought on the basis of any of the provisions contained in the Industrial Disputes Act. It is finally stated that the termination of service of the petitioners was however unfortunate as it became inevitable and necessitated for the reasons beyond the control of the respondents. The legal submissions projected in paragraphs 11 and 12 of the affidavit of the petitioners are said to be incorrect and untenable and that there is no merit in the writ petition.

4. During the course of the final hearing of the writ petition apart from the maintainability of the writ petition and the tenability projection of the reliefs sought before this Court in the writ petition being argued, learned counsel appearing on either side vehemently contended taking direct opposite stands about the character of employment of the petitioners, the writ petitioners by contending that they are workmen within the meaning of Section 2(s) of the Act and the respondents by taking the stand that they are not workmen having regard to the promotions accorded to them and the conditions of their service as also the duties performed by them. In view of the varying factual submissions made, it become necessary for us to direct the parties before us to file in writing affidavits containing details relating to their respective stands on the basis of the existing facts for making such claims on their behalf. The respondents filed their

claim in the form of an additional affidavit and the writ petitioners filed a reply to the same.

5. In the additional counter-affidavit filed by the respondents, apart from explaining the staff pattern in the Mills in question and claiming that the employees who are in the management Cadre D to G are employed whether in supervisory capacity or administrative capacity, it is stated that the petitioners are given absolute discretion and authority to act and take decisions on matters which are assigned to their control including the power to grant leave to workmen working under their control or to issue warning memos and enforce discipline. Four annexures have been filed with details relating to the different departments in which the various writ petitioner are serving their group or cadre in the management staff category and also the nature of duties performed by them. Per contra, in the reply filed by the petitioners to the said additional counter, overlooking the directions given to both parties to formally file in writing their claims with reference to the nature and character of employment and the duties discharged by them, strong objection is taken to the very filing of the additional counter affidavit, what is stated to be a belated stage. That apart, the general stand taken for the petitioners is that the petitioners, prior to their being accorded management staff status in 1990-91, they were all admittedly clerks or supervisors and belonging to a unionised category, that they cannot pull up any workmen or grant leave themselves or punish or initiate disciplinary action against any erring employee in the workmen category and they can only function as a reporting agent to take disciplinary action against them by the higher officials and that such powers can hardly be described as managerial powers. It is also claimed that if on any particular day any workman was absent or granted leave and during such absence, persons like the petitioners had to work with other workers doing the job in their respective departments and therefore, there is no merit in the claim of the management to the contrary. It is also claimed that the petitioners were only glorified clerks who were only to record the work that was turned down and in case there was any shortfall on the part of the workmen, they had to bring it to the notice of the higher authorities. Even in the concluding portion, it is stated that the additional counter-affidavit is highly belated and not true and has been filed with ulterior purpose.

6. Mr.N.G.R. Prasad, learned counsel appearing for the petitioners, in order to overcome the hurdle of maintainability of the writ petition as also the incompetence alleged to seek for the relief of the nature at any rate in these proceedings under Article 226 of the Constitution of India, placed strong reliance upon the decisions reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, ; Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, ; The State Bank of India Vs. Shri N. Sundara Money, ; Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, ; D.K. Yadav Vs. J.M.A. Industries Ltd., and Division Bench

of this Court) Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others, . Though reference has been made to several other decisions, we refrain from referring to the case for the reason that they are either decisions of the learned single Judges of this Court or for that matter they could not be considered to have laid down any proposition other than those laid down in the decisions specifically referred to above and or that they cannot be pressed into service notwithstanding the authoritative pronouncements made in the above decisions. Apart from contending that a writ could be issued against a private employer also and that it was so held in the case of the very company before us itself by this Court, the learned counsel for the petitioners also contends that inasmuch as the termination of the services of the petitioners is in contravention of Section 25-N and Section 25-F of the Act and that there is no effective or expeditious remedies, there can be no impediment for this Court to countenance the claim made in these proceedings under Article 226 of the Constitution of India. It was also contended that the respondent-company was a beneficiary of several concessions and assistances worth crores of rupees from Public Sector Banks/Financial Institutions in addition to tariff concessions, etc., granted to them to rehabilitate the Mills, public interest also involved in running the Mills and giving reliefs to the petitioners and that the flagrant violation of the principles of natural justice also would justify the intervention of this Court in the matter.

7. Per contra, Mr. P. Ibrahim Kalifullah, learned counsel for the respondent-management, invited our attention to some of the conclusions arrived at and principles laid down in the very decisions relied upon for the petitioners and contended that those decisions relied upon for the petitioners have no relevance to the context or nature of the relief against a private company and that the plea of public interest or alleged violation of the statutory provisions contained under the Industrial Disputes Act has no basis or substance and they cannot be invoked for claiming any relief in these proceedings under Article 226 of the Constitution of India. As against the claim of the petitioners that they are to be treated as workmen within the meaning of Section 2(s) of the Act it was strongly contended that the claim was without basis, since the petitioners were promoted to the post in the management staff cadre long prior to the impugned orders and that they ceased to be, on account of such promotions and service conditions as also by virtue of the agreements entered into among them, workmen to invoke the benefits under the Industrial Disputes Act. The learned counsel for the respondents, while inviting our attention to the decisions of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, ; M.K. Agarwal v. Gurgaon Gramin Bank, : [1987]3SCR640 ; Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, ; Brig. S. Ramachandran Vs. Hyderabad Allwyn Metal Works Ltd., Sanathnagar, Hyderabad and Others, ; Workmen in Canteen In S.R.F. Ltd. v. Govt. of Tamil Nadu 1996 (2) L.L.N. 965; Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co.

and Another, ; Integrated Rural Development Agency Vs. Ram Pyare Pandey, and the decisions of the Division Benches of this court in The Workmen of Buckingham and Carnatic Mills and Others Vs. The State of Tamil Nadu and Others, and Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others, contended that the petitioners are not entitled to any relief whatsoever in these proceedings and consequently the writ petition is liable to be dismissed.

8. (a) It is appropriate to at least make a cursory reference to the case law and the salient principles laid down therein which, in our view, are nothing new but reiteration of certain well settled principles from the angle of different perspectives as they arose and as they stood projected in each one of the cases. The earliest of the decision is that of the Apex Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . That was a case wherein a bench of two of their Lordships of the Apex Court had an occasion to deal with a challenge made by the employees of the Central Inland Water Transport Corporation Ltd. which is admittedly a Government Company u/s 617 of the Companies Act and "State" within the meaning of Article 12 of the Constitution, Rule 9(1) which empowered the Corporation to terminate the services of permanent employees without giving any reason and by giving three months notice or on lieu thereof paying three months basic pay and dearness allowance. Their Lordships of the Apex Court held that such a clause offends Section 23 of the Contract Act, 1872 as being opposed to public policy and, therefore, void besides being ultra vires of Article 14 and further violative of directive Principles contained in Articles 39(a) and 41 of the Constitution of India. As against the attempt of the learned counsel for the petitioners, who invited our attention to some of the paragraphs in the judgments wherein the above principles have been laid down, the learned counsel for the respondents invited our attention to some other paragraphs wherein reasons have been given by their Lordships of the Apex Court to justify their interference in proceedings under Article 226 of the Constitution of India, mainly based on the factual position that the Corporation concerned therein was "State" within the meaning of Article 12 of the Constitution of India given by the Civil Court could be granted in proceedings under Article 226 of the Constitution of India and, therefore, such proceedings are far more efficacious remedy.

(b) In O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , the Apex Court came to adjudicate on the validity of a similar clause found in the Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules. 1878. Bench of two of their Lordships of the Apex Court who decided the case held that Rule 31 (v) which provided for termination of the services of the employees of the Corporation by giving 90 days" notice or by payment of salary for the notice period in lieu of such notice, is violative of Articles 14 and 16 of the Constitution of India. The Corporation therein also having been held undisputedly to be "State" within the parameters of Article 12 of the Constitution of India, taking into account the provisions of the Second Schedule to the Industrial

Disputes Act which was found to be attracted to the case while declaring the termination of service to be invalid, compensation in lieu thereof equivalent to 3.3 years salary including admissible allowances were ordered to be paid. Strong reliance has been placed by the learned counsel for the respondents on the observations contained in paragraph 5 of the judgment bringing out the distinction between the employees covered by the Industrial Disputes Act and those excluded from the purview of the Industrial Disputes Act as also the employees in an undertaking of the Public Sector and the one on the Private Sector.

(c) In the decision reported in *M.K. Agarwal v. Gurgaon Gramin Bank*, : [1987]3SCR640 a Bench consisting of two of their Lordships of the Apex Court once again dealt with the validity of an order passed invoking a regulation which conferred on the Regional Rural Banks, the power to terminate the services of an Officer or an Employee after giving the notice for the stipulated period. The Apex Court interfered in the matter by ordering reinstatement while at the same time restricting the grant of back salary to 50% of what could be otherwise payable. Once again the Apex Court proceeded on the footing that the respondent Bank created under the Regional Rural Banks Act is "State" within the meaning of Article 12 of the constitution to justify their interference in writ proceedings.

(d) The decision in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, is that of a Constitution Bench of the Apex Court relating to a dispute concerning the termination of service of permanent employees of the Delhi Transport Authority. The Apex Court was concerned with the legality and validity of Regulation 9 (b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 which enabled the Transport Authority to terminate the service of any employee due to reduction of establishment or for any other cause by giving one month's notice or pay in lieu thereof. There was no doubt about the Transport authority being "State" within the meaning of Article 12 of the Constitution of India and, therefore, having regard to their obligation to conform to the provision contained in part III and part IV of the Constitution, the Service Regulation in question was held to be violative of Article 14 of the Constitution of India. As in the case of *th Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, as against the endeavour of the learned counsel for the petitioners to rely upon the relevant paragraphs of the Judgment to draw inspiration from the Judgment for their plea, the learned counsel for the respondents equally relied upon some of the paragraph of the very Judgment wherein their Lordships have observed about the essential difference between a Public Sector undertaking answering the description of "State" within the meaning of Article 12 of the Constitution and those in private employment and its relevance and importance in the matter of entertaining a claim for adjudication in proceedings under Article 226 of the Constitution or for the purpose of granting the relief of reinstatement. It may be pointed out that this decision has reviewed the entire case law on the subject exhaustively bringing out not only the salient principles

laid down in the earlier decisions but also the applicability or relevance of those principles to a given case and the essential pre-requisites for applying those principles in an individual case which has come before Court.

(e) In the decision reported in *Brig. S. Ramachandran Vs. Hyderabad Allwyn Metal Works Ltd., Sanathnagar, Hyderabad and Others*, the Apex Court has dealt with the case of termination of a General Manager/Executive Director on payment of three months' salary in lieu of the notice period. Two of their Lordships of the Apex Court relied upon and applied the principles laid down in the decisions rendered in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, .

(f) In *The Workmen of Buckingham and Carnatic Mills and Others Vs. The State of Tamil Nadu and Others*, a Division Bench of this Court had an occasion to consider the question as to whether a Mandamus could be issued to the Conciliation Officer before whom the Management and Workers reached a settlement to direct him to see that the terms of the Settlement are enforced. The Division Bench held that the B & C Mills is not owned fully by the Government and it cannot be held to be an instrumentality or agency of the Government and, therefore, could not come within the meaning of Article 12 of the Constitution of India and that the B & C Mills is not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

(g) In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Apex Court was considering the question relating to the issue of a writ of mandamus and held that the issue of a writ of mandamus is not confined to statutory authorities and instrumentalities of the State and that it can be issued to any other person or body performing public duty and in respect of those whom such duty is not imposed by the statute, it was observed therein that if the rights are purely of a private character, mandamus can be issued and if the management of the college is purely a private body with no public duty equally mandamus will not lie. The Court has also pointed out the exception to the said general rule or principle observing that when the party has no other equally convenient remedy, mandamus cannot be denied. It was also pointed out therein that the form of the body is not very much relevant and what is relevant is the nature of the duty imposed on the body and the duty must be judged in the light of positive obligation owed by the person or authority to the afforded party. No matter by what means the duty is imposed and consequently if a positive obligation exists, mandamus cannot be denied, the relief Of mandamus being every wide remedy which must be easily available to reach injustice wherever it is found. Technicalities, it has been held therein, should not come in the way of granting relief under Article 226 of the Constitution. The said principles came to be laid down in the context of a relief sought against a public trust which was running a Science College at Ahmedabad which had initially recognition as also affiliation to the Gujrat University and the obligation of the said College to implement the

revision of pay scales orders by the University.

(h) In *Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another*, the Apex Court, while dealing with the claim of a dismissed workman who filed a suit challenging the order of dismissal to be null and void and seeking for reinstatement with backwages, held that the scheme of Industrial Disputes Act excludes the jurisdiction of the Civil Court by implication in respect of remedies which are available under the said Act for which a complete procedure and machinery has been provided and that before the Civil Court what could be sought for was only relief of damages for breach of contract.

(i) In *Nandganj Sihori Sugar Company Ltd. and another v. Badri Nath Dixit and others* 1991 (I) L.L.J. 1192 a Bench of three of their Lordships of the Apex Court, while dealing with, the claim of the plaintiff who instituted a suit for mandatory injunction to enforce a contract alleged to have been entered into between the plaintiff and the defendant-management, held that a contract of employment cannot ordinarily be enforced by or against an employer and that the remedy is merely to sue for damages and Courts do not force an employer to recruit or retain in service an employee not required by the employer.

(j) In *Integrated Rural Development Agency Vs. Ram Pyare Pandey*, a Bench of two of their Lordships of the Apex Court, while dealing with the claim of a clerical staff of the integrated Rural Development Agency for a declaration that the termination order was illegal and void, held that the relationship between the Integrated Rural Development Agency in that case and the plaintiff-worker was based on contract and was purely that of master and servant and that to such a situation, the law governing master and servant as laid down in *Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another Vs. Badri Nath Dixit and others*, would apply and the relief of reinstatement cannot be granted. It was observed therein that by affording the relief of reinstatement or backwages, the Courts will, in fact, be granting specific performance of contracts of service.

(k) In *Workman Employed In The Canteen In S.R.F. Ltd. v. Government of Tamil Nadu and others*, (S.C.), 1996 (II) LLN 965 while dealing with the preliminary objection raised by the management that a writ petition was not maintainable for the relief of a writ of mandamus to forbear the company from dispensing with services of canteen employees without prior permission u/s 25-O of the Act, the Apex Court held that if a writ petition was not maintainable ab initio the High Court ought not to have entertained and proceeded to examine the claim on merits and that the writ petition in that case was not maintainable on the private company.

(1) In *P. Madhavan v. Binny Ltd. Represented By its General Manager, Personnel and Administration Madras* 1992 (I) L.L.N. 574 a Division Bench of this Court, while dealing with the challenge made to an order to transfer by the very company, viz., Binny Ltd., held that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they

are not public officials or statutory bodies.

(m) The decision in *Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills)* and others, on which strong reliance has been placed by the counsel on either side, was rendered by a Division Bench of this Court relating to the very company before us. The Division Bench has exhaustively reviewed the entire case law on the subject and in paragraph 48 held as follows:-

"48. On an analysis of the above rulings the followings propositions emerge:

1. A private body which is not a "State" within the meaning of Article 12 of the Constitution of India is not generally amenable to Article 226 of the Constitution.
2. A writ will issue against a private body to protect the fundamental rights declared under Part III of the Constitution of India.
3. A writ will issue in extra-ordinary circumstances if the monstrosity of the situation warrants it.
4. A mandamus will be issued against a private body, if there is no equally convenient remedy and if there is a public duty.
5. The implementation of a settlement u/s 12(3) of the I.D. Act is not a public duty and no writ will lie against a private body.
6. If the features are patent and they establish gross violation of the mandates of law, the jurisdiction under Article 226 of the Constitution could be exercised to quash a settlement u/s 18(1) or Section 12(3) of the I.D. Act."

Considering the claim projected before the Division Bench in the light of those principles, the Division Bench ultimately held while following the ratio of the earlier Division Bench Judgment reported in *The Workmen of Buckingham and Carnatic Mills and Others Vs. The State of Tamil Nadu and Others*, that the implementation of a settlement is not a public duty and no writ will lie against a private company and consequently the writ petition is not maintainable for the purpose. As for the relief in the nature of a direction to reopen the Mill pursuant to the orders of the Government, the Division Bench held that it is purely an administrative order not issued under any statutory provision or in pursuance of any statutory power and, therefore, the claim cannot be countenanced in a writ petition. In repelling the claim of an alleged violation of Sections 25-J and 25-O of the Act, the Division Bench also observed that it is a question of fact and when the matter is in dispute and not admitted by the management, it was not possible for the Court in proceedings under Article 226 of the Constitution to decide the case in the said proceedings. The Division Bench also held that the materials placed before the Court are not so patent as to warrant the conclusion that the terms of the settlement challenged was so unconscionable to warrant the interference and that the matter also requires detailed evidence and consequently outside the purview of consideration under Article 226 of the Constitution of India and squarely falls within the purview of the Industrial Courts

constituted under the Industrial Disputes Act. Finally it was held that it was not a fit case in which the discretionary remedy under Article 226 of the Constitution of India should be exercised, especially when an efficacious statutory remedy is available under the Industrial Disputes Act.

(n) In *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, the Apex Court held that if the monstrosity of the situation warranted, the issue of a writ even if the institution was a private one, could be justified. The said observation came to be made in the context of an issue arising out of the proceedings of an Arbitrator functioning u/s 10-A of the Industrial Disputes Act and in order to make clear the position that the self-imposed restraints on the use of the extraordinary remedy of writ will not be an impediment for the High Court to go beyond them where the monstrosities of a situation or exceptional circumstances cry for timely judicial interdict or mandate.

9. We have carefully considered the submissions of the learned counsel appearing on either side. In our view, the expensive use and exercise of powers under Article 226 of the Constitution of India cannot be made as a matter of course, merely because some grievance of a wrongful dismissal is made, despite the fact that such grievance is against a private party and not even any other authority and notwithstanding the position that an adjudication of the issues raised involve determination of question of fact which could be properly and effectively determined only on appreciation of materials placed on record, documentary or oral, or gathered in the manner known to and in accordance with law. Even the Division Bench decision reported in *Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills)* and others, , though profess to call out certain principles as flowing from out of the various decisions considered therein and stated such principles in a little too general and wide terms, the fact that ultimately the very Bench in applying those principles only too the view that the earlier decision of the Division Bench of this Court reported in *Buckingham and Carnatic Mills v. The State of Tamil Nadu 1982 (2) LLJ 90* taking the view that the implementation of a Settlement entered into u/s 12(3) of the Industrial Disputes Act cannot be had in exercise of the writ jurisdiction, will govern the case before them. The plea of alleged violation of Section 25-II and 25-O was refused to be gone into as involving consideration of disputed questions of facts. Therefore, the exercise of powers would always depend upon the peculiar facts and circumstances of the case and there cannot be any hard and fast rules of universal application. If any violation of fundamental Rights is directly involved for consideration, it matters very little as to the character or the status of the violator, be it or not answering the description of "State" within the meaning of Article 12 and the Court exercising jurisdiction under Article 226 would intervene. At the same time, even if he/it be a person or authority against whom ordinarily a writ would lie, if the subject matter of the writ or the grievance sought to be vindicated is such which the Courts exercising jurisdiction would hesitate to undertake to adjudicate on account of their being an effective statutory machinery to have such issued or on account of the need to take or record

evidence oral or mark documentary evidence with liberties to do so for either side, the writ Court would always consider it to be inappropriate to embark upon or entertain such issues for adjudication under Article 226 of the Constitution of India, though there are no statutory or constitutional limits stipulated on the exercise of power itself and the limitations imposed are self-imposed or imposed by any declaration of law made by the Apex Court. The decisions in Integrated Rural Development Agency v. Ram Pyare Pandey^{1995 (2) LLJ 293} and Workman Employed In The Canteen In S.R.F. Ltd. v. Government of Tamil Nadu and others^{1995 (2) LLN 965} will also go to show that the claim of the petitioners cannot be countenanced, as projected.

10. We now proceed to consider the area of disputes between parties in this case. There are vertical differences of vital and serious nature in the claim made of the nature of relationship between parties which is a fundamental and basic issue and which will have great impact upon the right to claim relief in this proceedings itself. Whereas the management claims that the staff in question are managerial staff, that they were promoted to such positions with higher scales of pay and that they also executed the required contracts of service and have been enjoying benefits under the same and it is not open to them to wriggle out of their commitments, the petitioners would contend that they continue even thereafter to do works and attend to jobs which entitle them the retention of the status of workers and unionised staff and, therefore, in the teeth of the alleged violation of the statutory provisions in the Industrial Disputes Act, protecting their rights, they are entitled to seek relief in this W.P. In the absence of proper investigation and determination of the factual issues disputed, after collecting the required materials in accordance with law, it would be not only inappropriate but impossible also for this Court to effectively adjudicate on these factual issues concerning the states of the petitioners and the nature of relationship between parties in those proceedings under Article 226 of the Constitution of India. Consequently, we are well justified in declining to go into such factual issues in these proceedings.

11. In the absence of such findings, to what relief the petitioners would be entitled to and to what extent the petitioners can agitate their grievance in those proceedings under Article 226 of the Constitution of India, would be the next question that requires consideration in our hands. Normally, we would not have ventured to undertake this question but for some extraordinary features indisputably present in this case. The petitioners' services came to be terminated not on account of any charges of misconduct or as a result to any findings recorded against them in any properly constituted or conducted enquiry. On the other hand, the termination was only on the basis and in exercise of the powers said to be available to the management under clause 8 of the Memorandum of Agreement/contract of employment entered into between the petitioners and the management, and on the sole ground that their services are no longer required. The Contract or Agreement of Employment states clearly about the position and nature and category of staff on which the respective

petitioners are employed. It forth while providing for the various conditions of service also incorporated clause 8 which reads as hereunder:

"8. The employment of the employed may be put an end to and terminated by either the employer or the employed giving to the other one calendar month's notice to such effect or by the employer tendering to the employed one month's salary and cash allowances in lieu of such notice. The employed agrees to pay to the employer by way of liquidated damages one month's salary and cash allowances in the event of his failure to give one calendar month's notice to put an end to and determine his employment."

The decision of the Supreme Court of India reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ; O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, have declared the position of law beyond doubt that a Rule or Clause in the contract or Agreement of Service which entitles the Management to terminate the services of an employee by merely giving one calendar month's notice or one month's salary in lieu of such notice would be ultra vires Article 14 of the Constitution of India and that such provision would also be opposed to public policy and violative of Section 23 of the Indian Contract Act. The petitioners, even if relegated to the relief of suit or the Industrial Dispute in the labour court, as it may deem fit, there could be no difficulty for those forums to strike down such a rule or declare such a clause to be void and unenforceable and it may not involve or necessitate any serious exercise or effort or any detailed enquiry to strike down such a rule or declare void such a clause, even in an agreement of service. The determination of the validity of such a clause as noticed above does not involve any factual investigation or appreciation of evidence and adjudication of factual issues. Consequently, instead of driving the petitioners to the appropriate forum, having regard to the fact that the writ petition has been filed and has been pending, on being entertained on the file of this Court so long we consider it appropriate, in the interests of justice to declare clause 8 of the Agreement of Service, extracted above to be void and unenforceable against the petitioners as being violative of Section 25 of the Indian Contract Act, applying the law declared by the Apex Court in the cases noticed supra. Consequently, the orders of termination in these cases are also declared illegal and non est, having no legs to stand in the absence of the provision contained in clause 8 above, which has been declared void.

12. The consequential relief cannot be granted in these proceedings, inasmuch as the nature of relief to be granted as to either reinstatement with or without back wages or merely damages would depend upon the status of the petitioners and character of their employment and those issues could be determined and relief granted only by the relevant and appropriate forum or Court, on a determination of the above factual issues. The writ petition is partly allowed only to the extent of the declaratory relief granted as above. The petitioner shall be at

liberty to work at their consequential reliefs and remedies, as are available in law, before the appropriate forum or Court, as permissible. Consequently, the writ petition shall stand disposed of on the above terms. W.M.P.Nos. 16009, 16010 and 20395 of 1996 are dismissed. No costs.