

(1973) 11 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Appeal No. 1152 of 1973

Ved Prakash Malhotra

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 26-11-1973

Acts Referred:

Citation : (1974) ILR Delhi 660

Hon'ble Judges : V.S. Deshpande, J;S.I. Rangarajan, J

Bench : Division Bench

Advocate : K.C. Sharma, P.P. Malhotra, F.S. Nariman and I.N. Shroff, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The petitioner is Shri Ved Parkash Malhotra who was the Chief Cashier, State Bank of India, New Delhi, on 24th May 1971 and whose credulousness in taking out the astronomical sum of sixty lakhs of rupees and in handing over the same to an unknown person hit the headlines in the Press, supplied ammunition to the critics of the Government and rocked the public. Malhotra says that the times were abnormal, he was working under great pressure and he was a victim of a clever ruse. Fortunately, however, most of the money was recovered soon and the remainder was paid into the treasury of the Bank by Malhotra himself so that the Bank did not suffer any monetary loss. The conduct of Malhotra, however, scandalised the Bank. A departmental inquiry was held against him which resulted in his dismissal on 10th November 1972 in accordance with a resolution of the Executive Committee of the Central Board of the Bank passed at its meeting on that day.

(2) The petitioner has challenged his dismissal in a very lengthy petition which was supplemented by a rejoinder to the counter affidavit filed by the Bank. We, however, invited the attention of Shri K. C. Sharma, learned counsel for the petitioner, to all the possible legal provisions which could have a bearing on the

disposal of the petition. The learned counsel, Therefore, moulded the contentions of the petitioner into the following grounds, namely:- 1. According to the statutory regulation No. 55 (2) (a) framed u/s 50 of the State Bank of India Act, 1955, the petitioner could be dismissed from service by the Executive Committee of the Central Board of the Bank alone. The tenure of the petitioner's service thus enjoyed a statutory protection. 2. In exercising the power of dismissal under regulation 55(2) (a), the Executive Committee had to act according to the rules of natural justice which are to be construed by the Court to be implied therein. 3. Though the Executive Committee is said to have decided the petitioner's case, the hearing given to the petitioner was not by the Executive Committee. 4. The hearing such as was given to the petitioner was inadequate. 5. The power of dismissal being quasi-judicial, the Executive Committee was bound to give reasons for exercising the same against the petitioner. The order of dismissal, not being a speaking order, is void; and 6. The Bank is "the State" within the meaning of Article 12 of the Constitution. It has discriminated against the petitioner by punishing him alone though some of his colleagues were also responsible for the withdrawal of rupees sixty lakhs from the Bank and handing over the same to an unknown person along with the petitioner.

(3) While the counter-affidavit of the Bank comprehensively met all the contentions in the lengthy writ petition, Shri F. S. Nariman, Additional Solicitor General, met the above mentioned grounds urged by the petitioner as follows:- 1. The employment of the petitioner by the Bank was purely a contract of service the termination of which could be made at the discretion of the employer. Regulation 55(2) (a) did not amount to any statutory protection against such termination. 2. As the power of termination of the petitioner's service was exercised under a contract and not under a statutory provision, the question of natural justice being observed in exercising the said power by an appropriate construction of regulation 55 (2) (a) did not arise at all. 3. It was not necessary for the Executive Committee to have heard the petitioner themselves. The hearing could be delegated to subordinate authorities. 4. The quantum of hearing given to the petitioner was precisely in accordance with rule 40 of the administrative Service Rules framed by the Bank and in force from 1st January 1959 and was adequate in the circumstances. 5. As the power of dismissal did not have to be exercised in accordance with any statutory provision or by any quasi-judicial authority, but only by the employer under a contract, no reasons for the dismissal had to be given. Alternatively, the resolution passed by the Executive Committee gives the reasons for the dismissal. 6. The Bank was not "the State" under Article 12 of the Constitution. Assuming that it was, no discrimination was practiced against the petitioner.

(4) We may now consider the opposing contentions below. 1. The basic question in the words of Professor H.W.R. Wade, (Administrative Law, third Edition, page 122), in each case is "whether the public authority is acting as an ordinary employer who has power to dismiss his employees subject to payment of damages for any breach of contract or whether it has only a statutory power of

dismissal which is restricted by the statute". As pointed out by the Full Bench of this Court in *Indian Institute of Technology v. Mangat Singh*, 1973) Ii Delhi 6 , "employment is originally and still basically a contract between the employer and the employee". This is true whether the employer is a private person, a statutory corporation or the State itself. Merely because the State is under the Constitution and a statutory corporation is a creature of the statute creating it, their relationship with their employees does not cease to be contractual. It only becomes statutory to the extent that the contract is superseded by the Constitution or the statute. Reliance was placed for the petitioner on an observation in *J. C. Sachdev v. Reserve Bank of India*, (1973) L.L.J. 204 to the following effect.-"We have not come across a case where a statutory body like the bank, which is State within the meaning of Article 12 of the Constitution, makes appointments of all its employees under a contract". This observation was obiter. For, in that case. the Reserve Bank of India was held to be "the State" under Article 12 of the Constitution. It could not, Therefore, practice discrimination in respect of certain classes of its employees contrary to Article 14 and 16 of the Constitution irrespective of the question whether the employment was contractual or statutory. Further, with respect, the attention of the Court does not seem to have been invited to the fact that even a State or a Government may appoint all its employees under a contract as distinguished from a statute. In *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , Ray C. J., speaking for the Constitution Bench of the Supreme Court observed that the power to abolish any civil post is inherent in every sovereign government as it is necessary for the proper functioning and internal administration of the State. No provision of the Constitution authorises the State or the Government to make appointments of administrative personnel. This does not prevent the making of such appointments because the power is inherent in every sovereign government. As pointed out in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , under the English Common Law all servants of the Crown held office during the pleasure of the Crown and were liable to be dismissed at any time and without any reason being assigned for such dismissal,even though it were contrary to the express term of the contract of employmentThe established notion was that the implied condition between the Crown and its servant was that the latter held his office during the pleasure of the Crown, no matter whether it had been referred to when the engagement had been made or not and that public policy demanded this qualification". This still continues to be the law in England. Theoretically, Therefore, there is nothing to bar the State from making all the service under it entirely contractual without being statutory. This is also the position under Article 310 of the Constitution. It is only because Article 311 modifies the doctrine of pleasure that the power of dismissal is restricted to that extent only. Rules made under Article 309 work out the details of restrictions imposed by Article 311. Lastly, the decision of the Supreme Court in *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, , though delivered on 31-1-1972 does not seem to have been brought to the notice of their lordships who delivered the judgment in *J. C. Sachdev*'s case on 11th May 1973.

The primarily contractual nature of employment even though it may be under the Government, a local authority or a public authority unless modified by a statute was emphasised by the Supreme Court in Vidya Ram Misra's case after a review of all the relevant English and Indian decisions. Their lordships in deciding J. C. Sachdev's case did not have the benefit of the decision in Vidya Ram Misra's case by which we are bound.

(5) In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , reference was made to the decision in The University of Madras Vs. Shantha Bai and Another, , wherein the High Court had held that a University could not be regarded as a local or other authority as defined in Article 12 of the Constitution. This and some other decisions expressing a similar view were disapproved by the Supreme Court who, after quoting the meaning of the word "authority" given in Webster's Third New International Dictionary, observed that the word was clearly "wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi governmental functions". At page 386 of the report, the Court observed that "the State, as defined in Article 12 is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people". According to the analysis of this and the other Supreme Court decisions made by a Full Bench of this Court in The Industrial Finance Corporation of India v. Delhi Administration, 1973 (2) S.L.R. 462 a body or authority constituted or set up by or under the Constitution or a statute would be an "authority" and hence "the State" within the meaning of Article 12 if, inter alia, it is vested with powers to carry out governmental or quasi-governmental functions or if it is invested with the power to make rules or regulations which have the force of law and to administer or enforce them to the detriment of citizens and others. A University is vested with the power to carry out the governmental function of imparting education to the people. It also has the power to make statutes and ordinances which have the force of law and to administer them to the detriment of the citizens and others concerned. A University is, Therefore, more likely to be regarded as "the State" than the State Bank of India (the question whether the State Bank of India is "the State" being considered later). But section 45(1) of the Delhi University Act, 1922 expressly states that every salaried officer and teacher of the University shall be appointed under a written contract, which shall be lodged with the University and a copy thereof shall be furnished to the officer or teacher concerned. Thus all the salaried officers and teachers of the University which has a better claim to be regarded as "the State" than the State Bank of India are employed on a contractual basis alone. In S.B. Dutt Vs. University of Delhi, , the essentially contractual nature of the employment of a professor of the University is recognised. The award of the arbitrator appointed u/s 45(2) of the Delhi University Act was set aside as disclosing an error of law apparent On the face of the record inasmuch as the award purported to reinstate the professor contrary to the law that a contract of employment could not be specifically enforced. We, Therefore, conclude that there is no a priori bar to the appointment of its

employees by the State Bank of India purely on contractual basis.

(6) As pointed out in Mangat Singh's case, referred to above, "this bilateral relationship is, however, often found to be superceded partly or wholly by status which is contrasted with contract. Status is determined extrinsically by law and not by agreement between parties". We have, Therefore, to inquire whether the employment of the petitioner with the State Bank of India was only a contract of service or whether a statutory status was conferred on the petitioner by law independently of any agreement between the parties. The State Bank of India was established by the State Bank of India Act, 1955. By section 7 of the Act, the services of the employees of the then Imperial Bank of India were transferred to the State Bank of India and each employee was to hold his office or service on the same terms and conditions unless and until these were duly altered by the State Bank of India. This provision is analogous to section 11 of the Life Insurance Corporation of India Act, 1956. Its effect was considered by the Supreme Court in Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, . At page 535 of the report, it was pointed out that persons who had been employed by private insurance companies thereby became the employees of the statutory corporation, namely, the Life Insurance Corporation of India "but their employment continued to be on the same terms and conditions as before". Their employment prior to the take-over was contractual. It, Therefore, continued to be contractual despite section 11. For the same reason, the terms and conditions of the employees of the Imperial Bank which were purely contractual continued to be contractual despite section 7 of the State Bank of India Act, 1955. The effect of section 7 was merely to transfer the services of these persons to the new Bank but not to confer any statutory status on the employees. It simply recognised and continued their existing contractual status. u/s 43(1) of the State Bank of India Act, 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. According to section 16 of the General Clauses Act, Therefore, the State Bank had also the power to dismiss such persons who could be appointed by it. In Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court, . It was held that the power of the Chief Justice to appoint the staff of the High Court under Article 229 of the Constitution was administrative in its nature and so was also the corresponding power of dismissal and that it was not a judicial power. The power of the State Bank to appoint and dismiss its personnel is also, Therefore, administrative. As such it can be exercised by the State Bank in its discretion. There is no provision in the State Bank of India Act regulating or restricting this power in any way. This can be contrasted with the restrictions placed on Article 310 by Article 311 of the Constitution. Regulation 55(2) (a) of the State Bank of India General Regulations, 1955 made under sub-section (3) of section 50 of the State Bank of India Act, however, provides that "the initial appointment of officers of all categories shall be made by the Executive Committee. Such officers

shall not be dismissed from the service of the State Bank except by the Executive Committee".- This restriction is analogous to Article 311(1) of the Constitution. The petitioner was appointed by the Executive Committee and he was also dismissed by the Executive Committee. The statutory protection granted to him by regulation 55(2) (a) was thus respected. What he contends is that, regulation 55 (2) (a) has the effect of converting the whole of the tenure of service into a statutory one. In other words, he would like to believe that the protection afforded to government servants by Article 311(2) of the Constitution should also be accorded to him. This contention ignores that there is no provision analogous to Article 311(2) governing the petitioner's tenure under the State Bank. In considering his tenure, our approach must be that it is contractual except insofar as the power of dismissal is restricted by regulation 55(2) (a). This restriction is limited to the authority who has power to dismiss him. It does not extend to the laying down of any procedure involving the observance of rules of natural justice.

(7) It is only if the power to dismiss the petitioner possessed by the State Bank had been subject to some statutory restriction that the question could arise whether the dismissal was contrary to such statutory restriction. Merely because the State Bank is a statutory corporation, it cannot be said that the dismissal of the petitioner by it was contrary to any statutory restriction which did not exist at all. In *Welch v. Bank of England*, 1955 1 A.E.R. 811, section 21 of the Limitation Act, 1939 came up for construction. Its relevant part was as follows:-

" NO action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority unless it is commenced before the expiration of one year from the date on which the cause of action accrued".

The question considered at page 827 was which of the actions of Bank of England could be said to fall within the section. Reference was made to the distinction drawn by Buckmaster, L.C., in *Bradford Corporation v. Mays* (1916) 1 A.C. 242, which was as follows:-

"The Act applies only to a definite class of persons and to a definite class of action. the words of the section themselves limit the class of action, and show that it was not intended to cover every act which a local authority had power to perform. In other words, it is not because the act out of which an action arises is within their power that a public authority enjoy the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. I regard these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to all the public. It assumes that there are duties and authorities which are not-public, and that in the exercise or discharge of such duties or authorities this protection does not apply".

Unless and until, Therefore, the petitioner could show that the Bank was under any restriction imposed by a statute or a statutory rule in dismissing the petitioner, he cannot succeed in showing that such dismissal was not made in accordance with these restrictions but was contrary to them. In short, the dismissal still remained in the discretion of the Bank and had not to be made in accordance with any statutory restriction. The question of such restriction does not, Therefore, arise.

(8) The power to appoint and dismiss its personnel possessed by the State Bank being administrative in its nature, the State Bank has framed State Bank of India (Sub-Accountants and Head Cashiers) Service Rules which came into force from 1st January 1959. It is common ground that these are administrative rules. They are not framed in exercise of any statutory power. They are not regulations framed u/s 50 of the State Bank of India Act and the State Bank has no other statutory power to frame rules. How are these rules made binding on the employees ? The State Bank takes a declaration from each of the concerned employees at the time of his employment to be bound by these rules and such a declaration was signed by the petitioner. This expressly makes the rules binding on the petitioner only by virtue of the agreement between him and the State Bank and not for any other reason. This is to be contrasted with the binding nature of the administrative instructions issued by the Government of India. Unlike the State Bank of India, Articles 53, 73 and 77 of the Constitution give executive power to the President of India. Administrative instructions issued in exercise of such executive power are binding on the employees of the Government of India without the necessity of entering into separate contracts with each of them. But the employment of Government servants is also originally contractual except insofar as it is superseded by the provisions of the Constitution, statutes and the rules made under the Constitution relevant in the particular case as was recognised by the Supreme Court in *Roshan Lal Tandon Vs. Union of India (UOI)*, . It is in this background that we have to decide whether the service of the petitioner under the State Bank of India is dominantly contractual or dominantly statutory. The answer that it is dominantly contractual is furnished by the distinction made between the two identical circumstances by the Supreme Court in *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, . In *Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another*, , the University statute which had the force of law itself contained the provisions which regulated the termination of the service of a teacher of a college affiliated to the University. This statutory provision was embodied in a contract which was signed by the teacher. As the provision had already existed in the statute before it was incorporated in a contract, it still had the force of law. A dismissal in contravention of such a provision was, Therefore, held to be ultra vires. On the other hand, in *Vidya Ram Misra's* case, the position, was entirely different as stated in paragraph. 10 of the report. The statute of the University did not contain the terms on which the service of a teacher of an associated college could be terminated. These terms were contained only in the contract signed by

the teacher. The terms, Therefore, remained purely contractual and had no statutory force. A breach of those terms, Therefore, amounted to a breach of the contract and not to a violation of any statutory obligation. A writ petition complaining of the breach of such terms could not, Therefore, lie. The present petition is governed by the decision in Vidya Ram Misra's case because the terms on which the petitioner is liable to be dismissed by the Bank are contained only in the administrative rules which bind the petitioner because of an express contract with the Bank. They are not contained in a statute or statutory rule and have, Therefore, no force of law. We find so.

(9) In this connection, two questions have to be kept entirely distinct, namely. (1) whether a writ petition lies against the State Bank of India, and (2) whether the relationship between the Bank and its employees can be entirely contractual because of which no relief can be given to a dismissed employee of the Bank in a writ petition. As a general proposition, the State Bank of India being a statutory body is "a person or authority" within the meaning of Article 226(1) of the Constitution. A writ petition can, Therefore, lie against the State Bank of India. But this does not mean that a dismissed employee can have relief against the Bank by way of a writ petition unless he shows that his dismissal was contrary to some statutory provision. The two questions do not appear to have been kept separate, with respect, in V. Ramiah Vs. State Bank of India, as would appear from the first sidelined sub-paragraph in paragraph (12) of the report. 2. The power to appoint the petitioner was given to the Bank by section 43(1) of the State Bank of India Act. Read with section 16 of the General Clauses Act this power implies the power to dismiss the petitioner. The word "dismiss" in section 16 of the General Clauses Act is used in a general sense indicating the power to terminate the services generally. The word "dismiss" is not used in the technical sense in which it is used in Article 311(2) of the Constitution and is, not, Therefore, restricted to a dismissal by way of punishment. The relationship between master and servant being purely contractual, the master has only the power to terminate the contract of employment. He has no disciplinary jurisdiction over the servant unless this is given to the master by a contractual or a statutory provision. This is why the master has no inherent power to suspend the contract of employment and to give to the employee less than his pay during the period of suspension. (V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, , and the case-law reviewed there in). The power to hold a disciplinary inquiry and to dismiss the petitioner as a result thereof was given to the State Bank only by rule 39 of the administrative Service Rules which were accepted as binding on him by the petitioner. In the absence of such agreement, the Bank would not have such a power. For, it has been held that even a power to suspend an employee cannot be given to the employer by implying such a term in the contract of service. It can be given only by an express term (The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, followed in Balvantray Ratilal Patel Vs. The State of Maharashtra, . It is well established that the employer does not have to observe any rules of natural justice in dismissing

an employee when the dismissal is according to contract and is not in contravention of any statutory restriction governing the power of dismissal (*Ridge v. Baldwin*, 1964 A.C. 40 per Lord Reid).

(10) Reliance was placed for the petitioner on the observations in *Mangat Singh's* case, referred to above, (at pages 16 to 18 of the report) to support the contention that in construing the power of dismissal given by a statute or a statutory provision, the Courts would imply that such power is to be exercised after complying with the rule of natural justice. But as stated therein, this is only a rule of interpretation of statutes. It cannot be applied to the construction of the contractual power of dismissal possessed by a master over his servant. Such a power is not to be exercised in accordance with the rules of natural justice. Regulation 55 (2) (a) does not give the power of dismissal to the Bank against its employees. It assumes the existence of such a power and merely states that an officer has to be appointed only by the Executive Committee and shall not be dismissed from the service of the Bank except by the Executive Committee. The power of dismissal is assumed to exist. It is only not to be exercised by any one except the Executive Committee. Just as no natural justice is to be implied in construing Article 311(1) of the Constitution, similarly the question of reading natural justice into regulation 55 (2) (a) also does not arise. For, the power of dismissal exists independently of these provisions. The dismissal is not in exercise of these provisions. These provisions cannot, Therefore, be construed as implying that the action there under can be taken only following the natural justice procedure. 3. The rule of natural justice which requires a hearing to be given before action involving civil consequence is taken against a person by the Government or a public authority includes the secondary rule that the person who decides (to punish etc.) must hear the person against whom the action has to be taken. When the decision is taken by an individual, it is arguable that such an individual should hear a person who is to be affected by the decision. But in its application to an institution, this rule has to be modified. In *G. Nageshwar Rao v. State Road Transport Corporation* (1959) Suppl.1 S.C.R. 319, Subba Rao, J., Speaking for the majority, considered the argument that the objections were heard by the Secretary while they were decided by the Chief Minister and the objector were Therefore, denied a personal hearing. This contention was upheld on the ground that "if one person hears and another determines, then personal hearing becomes an empty formality". It was respectfully pointed out in an Article in 1960-2 Journal of the Indian law Institute, page 423, that the decision of the State Government u/s 68-D of the Motor Vehicles Act was to be an institutional one. It was difficult, Therefore, to expect the Chief Minister himself to hear the objections personally. The Secretary was a part of the machinery of decision and could, Therefore, hear the objections. The American Administrative procedure Act, 1946 and the Report on Administrative Tribunals and Enquiries, 1957 by the Franks Committee in the United Kingdom both recognised that administrative authorities and departments had to work institutionally so that the hearing may be given by one officer and the ultimate decision can be taken by

another on the record submitted by the hearing officer. This position was subsequently recognised by the Supreme Court in *Kalyan Singh v. State of Uttar Pradesh*, (1962) Supple. 2 S.C.R. 76 holding that the formation of the opinion of the State Government and the consideration of the objections of the objectors by the State Government could be done by the officers authorised to do so under the Rules of Business. In *A. Sanjivi Nadu v. State of Madras*, , it was again argued that u/s 68-C of the Motor Act, the requisite opinion could have been formed either by the Council of Ministers or the Minister to whom the business in question has been allotted and it could not be formed by the Secretary. This contention was rejected by the Court after a review of the previous decisions (See the discussion in 1971 Journal of the Indian Law Institute 326 at 355-358).

(11) The State Bank is a corporation and not a natural person. The Executive Committee is also not one person. It is a part of its highest body, i.e., the Central Board. It is impossible for it to hear personally every employee against whom disciplinary action is to be taken. In *Pradyat Kumar Bose* case, the power to dismiss the petitioner vested in the Chief Justice of the High Court. The hearing to the petitioner was given by another judge of the High Court and not by the Chief Justice himself who dismissed the petitioner on the report submitted by the inquiring judge. The petitioner objected that the power to dismiss could not be delegated by the Chief Justice to another judge. This contention was rejected by the Supreme Court at page 1345 in the following words:-

" BUT the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nevertheless so, by reason of the fact that on opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof. It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power".

The House of Lords decisions in *Board of Education v. Rice*, (1911) A.C. 179 , and *local Government Board v. Arlidge*, (1915) A.C. 120 , taking a similar view were referred to. The hearing to the petitioner was given first by the Investigating Officer Shri Bhambani who made a preliminary investigation and submitted his report. A chargesheet was then given to the petitioner who replied to the same. The reply of the petitioner and the report of Shri Bhambani were placed before the Secretary and Treasurer who considered the same. He also gave a personal hearing to the petitioner. He then placed the papers before the Executive Committee which passed the resolution dismissing the petitioner. As the decision of the Executive Committee was on institutional decision, it could be preceded by a hearing by the officers whose duty was to hear and submit a report ultimately to the Executive Committee. That hearing was sufficient in the nature of circumstances. A personal hearing by the Executive Committee was not necessary. 4. Firstly, the relationship between the petitioner and the Bank being contractual, no hearing was necessary. Secondly, in accordance with the terms of

the contract, the hearing could be given only in accordance with rule 40 of the administrative Service Rules which laid down the procedure for such a hearing. It is not disputed that the hearing given to the petitioner was strictly in accordance with rule 40. Petitioner contends that rule 40 did not require the report of the Investigating Officer to be shown to the petitioner. Nor did it require Shri Bhambani to inform the petitioner what information he had gathered orally from other persons. He Therefore, contends that the hearing given to him was inadequate. It is well established that the quantum of natural justice is not a fixed one. It differs according to the facts of each case. The Bank has framed the administrative rules and laid down the quantum of natural justice to be given to each employee in rule 40. This rule has been in force from 1st January 1959. It has not been held to be inadequate in any way in determining what is the quantum of natural justice to be given to an employee by the Bank. This is as good a guide to the Court as anything else could be. Disclosure of the report of preliminary investigation is not a *sine qua non* of hearing given accordingly to natural justice. (Suresh Koshy George Vs. University of Kerala and Others, and the case-law reviewed therein, and Shadi Lal Gupta Vs. State of Punjab , as also Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, . See also University of Ceylon v. E.F.W. Fernando, 1960 1W.L.R. 223 a Privy Council decision).

(12) During the argument, an attempt was made to show that even before the inquiry against the petitioner was concluded, circulars were issued signed by some one for the Deputy Secretary and Treasurer informing the other employees of the lapse and negligence on the part of the petitioner and warning them to be cautious. The circulars were approved by the Secretary and Treasurer before they were issued. The hearing to the petitioner was given by the Secretary and Treasurer and it was on his report that the Executive Committee dismissed the petitioner. It was suggested that the Secretary and Treasurer could be said to have been biased against the petitioner and should not have, Therefore, made a report about his case to the Executive Committee. This contention could not be accepted by us. Firstly, throughout the lengthy writ petition and the rejoinder, no allegation was made by the petitioner that the Secretary and Treasurer had any bias against him. Allegation of bias had been made against Shri Bhambani but he was only an Investigating Officer. He did not have to judge the conduct of the petitioner. His bias, Therefore, could not vitiate the judgment of the Secretary and Treasurer. Secondly, the Secretary and Treasurer had the duty to approve the circulars and also the duty to judge the conduct of the petitioner by virtue of his official position. Both these duties have to be discharged by him in all cases. This was not peculiar to the case of the petitioner. He could not have, Therefore, formed any bias against the petitioner. Thirdly, if at all the petitioner thought that the Secretary and Treasurer would be biased against him, then it was his duty to express his fears during the inquiry and bring them to the notice of the Secretary and Treasurer. Had that been done, the Secretary and Treasurer might have avoided to judge the case of the petitioners and the Executive Committee might

have entrusted this task to some one else. As the petitioner raised no such objection, it would now be unfair for him to say so. Lastly, the petitioner's case is merely between a servant and a master. The bias of the Inquiry Officer, if at all, could be material if the case had been governed by the Industrial Disputes Act. Since it is not so, the bias is not material even if it had existed. 5. Again in a master and servant relationship, the employer does not have to give any reasons for the dismissal of an employee. The principle is that a contractual employee holds his job during the pleasure of the employer. If the employment is not protected by statute, then the employee does not have to be heard before he is dismissed and reasons do not have to be given for his dismissal. This is established by the decision in *Ridge v. Baldwin*, (1964) A.C. 40, where Lord Reid observed as follows :-

" THE law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defense : It depends on whether the facts emerging at the trial prove breach of contract."

(13) Even when the employment is protected by statute as was the case in *Malloch v. Aberdeen Corporation*. (1971) 2 A.E.R. 1278, only the principles of natural justice are to be followed in dismissing the employee. These principles do not include the requirement of giving reasons for the dismissal. This is made clear by Lord Reid at page 1282 of the report when he said as follows:-

" THEN it was said that it is inconsistent that a body should be entitled to act at pleasure but nevertheless bound to hear me teacher before acting. I can see no inconsistency. Acting at pleasure means that there is no obligation to formulate reasons. Formal reasons might lead to legal difficulties. But it seems to me perfectly sensible for Parliament to say to a public body. "You need not give formal reasons but you must hear the man before you dismiss him"."

(14) The decision to dismiss the petitioner is an administrative one according to the Supreme Court decision in *Pradyat Kumar Bose* case, referred to above. Secondly, even if such a decision were to be regarded as a quasi-judicial one, the rule which requires a quasi judicial authority to give reasons for its decision has not been established to be a part of the principles of natural justice. The rules of natural justice have been summarised to consist only of two basic requirements, namely:-

(1)that a person must have hearing before an order adverse to him is passed against him; and (2) that the person judging him must not have a bias against the person who is judged.

(*Suresh Koshy George Vs. University of Kerala and Others*, , and the decisions cited therein). On the other hand, it has been repeatedly asserted that there is

no implied duty in English law to give reasons for a decision even by a quasi-judicial authority. C.S.A. de Smith-judicial Review of Administrative Action, Second Edition, pages 29, 133, 179 and 313). Professor Smith has pointed out that only in one limited class of cases, such an implied duty to give reasons has been recognised. Licensing justices empowered to refuse legal licenses on four specified grounds could be compelled by mandamus to hear and determine the applications "according to law" (Smith, op Commissioner of Income Tax 133). In India the duty of a quasi-judicial authority to give reasons has been implied by the Supreme Court in various decisions such as Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, . Sardar Govindrao and Others Vs. State of Madhya Pradesh, , and Bharat Raja Vs. The Union of India (UOI) and Others, . Such a duty is implied on two grounds, namely:-

(1) the necessity of the appellate authority to know the reasons if any appeal is allowed against the concerned decision; and (2) the need for the person concerned to know the reasons so that he may challenge them, if necessary, even by a writ petition wherever possible.

(15) None of these two reasons are applicable to the present case. The decision of the Bank to dismiss the petitioner is not appealable. Similarly, it is not capable of being challenged by way of a writ petition. The Executive Committee did not, Therefore, have to give any reasons for their decision in dismissing the petitioner. Further, even in India, circumstances are recognised which would make the giving of reasons even by a quasi-judicial authority unnecessary. In Som Datt Datta Vs. Union of India (UOI) and Others, , the Supreme Court squarely denied the necessity of giving reasons in the following words :-

" APART from any requirement imposed by the statute or statutory rule expressly or by necessary implication, we are unable to accept the contention of Mr. Datta that there is any principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision".

(16) The reason seems to be that the decision of a Court-martial (concerned in that case) would not be interfered with generally by the Supreme Court or the High Court and secondly, the statutory provisions governing the Court-martial and the confirmation of its proceedings preclude the necessity of giving reasons for the decision. Similarly) if the reasons for the action are notorious, then it is not necessary for them to be stated. Nandram Hunatram, Calcutta Vs. Union of India (UOI) and Another, , and Commissioner of Income Tax, Bangalore Vs. K.Y. Pilliah and Sons, . In the present case, the resolution passed by the Executive Committee dismissing the petitioner was as follows :-

" HAVING considered the entire record and the disciplinary proceedings, particularly the Explanation and submissions of Shri V.P. Malhotra, Chief Cashier under suspension, the Committee found Shri Malhotra to be guilty of the charges framed against him; accordingly, it was resolved that in terms of rule 39(f) of the S.D.I. (Sub-Accountants and Head Cashiers) Service Rules Shri Malhotra be

dismissed from the Bank's service with immediate effect".

(17) The case against the petitioner was specifically stated in the written charges given to him. The charges amounted only to saying that the petitioner acted very imprudently in taking out such a big sum of rupees sixty lakhs without covering it by insurance etc. and handing it over to an unknown person. The fact was never denied by the petitioner. The question before the Executive Committee only was what punishment should be meted out to the petitioner. No reasons are generally required to be given for the quantum of punishment imposed in a particular case. For, this is in the discretion of the punishing authority. In the circumstances of the case, where the facts were all admitted, it cannot be said that the resolution of the Executive Committee does not give the reasons for the decision to punish the petitioner. It is true that the full resolution was not communicated to the petitioner. Only the last portion of it, namely, the order of dismissal was communicated. The earlier portion containing the reasons was not communicated to him. This however is not fatal to the validity of the order. The Supreme Court has clarified that the mere fact that the reasons were not stated in the final order itself but were available elsewhere in the record would not vitiate the proceedings of the quasi-judicial authority inasmuch as the reasons could be known by the court during judicial review. It further held that even if reasons were given after the decision, but before the case came for judicial review, the proceedings would not be vitiated. (Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, . Not only in the resolution of the Executive Committee but also in the counter-affidavit filed before us by the Bank the reasons for the dismissal of the petitioner have been fully explained. 6. There is a clear distinction between the functions of the Reserve Bank of India held to be "the State" within the meaning of Article 12 in J. C. Sachdev v. Reserve Bank of India, 1973 2 L.L.J. 204, and the functions of the State Bank of India. The former discharges the function of a central bank in addition to being the chief monetary authority in the country. It also implements the provisions of the Foreign Exchange Regulation Act etc. The latter stands midway between the Reserve Bank on the one hand and other nationalised banks on the other hand. Though it does not exercise the central banking and monetary functions like the Reserve Bank, it is not quite a purely commercial bank like the nationalised banks. It acts as the agent of the Central Government or any State Government or any corporation u/s 33(1)(xa) of the State Bank of India Act, 1955 in implementing any scheme for financing the construction of dwelling houses and in advancing or lending money from out of the funds placed at its disposal as such agent by the Government or corporation to any person upon such security and on such terms and conditions as may, notwithstanding anything contained in the Act, be approved by the Government or corporation by which such funds have been placed. u/s 32 it also acts as the agent of the Reserve Bank in respect of certain of its banking functions. The preamble of the State Bank of India Act says that the Bank is established for the extension of banking facilities on a large scale more particularly in the rural and semi-urban

areas and for diverse public purposes. It is unnecessary, however, to examine for the purpose of this case whether the State Bank is "the State" under Article 12 of the Constitution. Such a decision would have been necessary only if some case could have been made out by the petitioner that he has been discriminated against by the State Bank. Since no such case has been made out as will be shown presently, we do not think it necessary to consider this question.

(18) The responsibility of the petitioner being the Chief Cashier for the handing over of the sixty lakhs of rupees to an unknown person was greater than that of his subordinates. Action was, Therefore, taken against the petitioner before action was taken against his subordinates. This cannot be called discrimination. Even if it is assumed that action ought to have been taken against the subordinates of the petitioner simultaneously and that action against the subordinates should not have been delayed (it is understood that it is being taken now) it is not shown to us that the petitioner and his subordinates were similarly placed. On the contrary, the responsibility of the petitioner is, on the face of it, greater than the responsibility of the subordinates in this transaction. Even if it is assumed that all of them had been equally responsible, the action taken against the petitioner does not become discriminatory merely because similar action was not taken against the others. All that the petitioner could be allowed to urge is that action should be taken against the others. He cannot urge that action should not be taken against him for that reason. In *Narain Das and Others Vs. The Improvement Trust, Amritsar and Another*, , the petitioner alleged that while his land was acquired, lands of some other persons were exempted from acquisition and that this was discriminatory against him. This contention was rejected by the Supreme Court at pages 273-274 first because the others were not shown to be similarly placed with the petitioner. The Supreme Court then observed:-

" IN any event if the appellants have failed to bring their case within section 56 of the Act then merely because some other party has erroneously succeeded in getting his lands exempted ostensibly under that section that by itself would not clothe the present appellants with a right to secure exemption for their lands. The rule of equality before the law or of the equal protection of the laws under Article 14 cannot be invoked in such a case".

(19) In the present case also, merely because the subordinates of the petitioner were not proceeded against, the action against the petitioner himself does not become discriminatory.

(20) For the above reasons, the writ petition is dismissed, but in the circumstances without any order as to costs.