Managing Director, Uttar Pradesh ... vs Vinay Narayan Vajpayee on 16 January, 1980

Equivalent citations: 1980 AIR 840, 1980 SCR (2) 773, AIR 1980 SUPREME COURT 840, (1980) 3 S C C 459 57 F J R 1, 1980 ALL. L. J. 358, 1980 ALL. L. J. 858, (1980) 1 LAB LJ 212, (1980) SERVLJ 204, (1980) CURLJ(CCR) 146, 1980 (1) LABLJ 222, (1980) 2 S C R 773, 1980 (12) LAWYER 115, 55 FJR 1, 1980 SCC (L&S) 453, (1980) 1 SCWR 381, (1980) 1 SERVLR 497, (1980) 1 LAB LN 297, 1980 (3) SCC 459

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, O. Chinnappa Reddy

PETITIONER:
MANAGING DIRECTOR, UTTAR PRADESH WAREHOUSING CORPORATION &AN

Vs.

RESPONDENT:
VINAY NARAYAN VAJPAYEE

DATE OF JUDGMENT16/01/1980

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
REDDY, O. CHINNAPPA (J)

CITATION:
1980 AIR 840 1980 SCR (2) 773
1980 SCC (3) 459
CITATOR INFO :
RF 1981 SC 212 (31,32)
R 1981 SC 487 (10)
F 1984 SC 541 (13)
RF 1984 SC1361 (20,27)
R 1986 SC1571 (53,69)
RF 1988 SC 469 (9)
RF 1990 SC 415 (21)
F 1991 SC 101 (223,236)

ACT:
Labour dispute-Employer-A Statutory Corporation-Dismissed an employee without giving an opportunity of being heard-Validity of.

Statutory bodies-Rights of employees under.

Constitution of India-Article 226-Scope of-High Court issued Writ of Certiorari quashing order of dismissal and ordered reinstatement of employee with full back wages-If competent to order reinstatement.

HEADNOTE:

The respondent was an employee of a statutory body. On allegations of theft, misappropriation of stocks and certain other irregularities a preliminary enquiry was conducted by the Managing Director (the appellant) and charges were framed against the employee. In the explanation submitted by him he expressly demanded that he wished to cross-examine certain witnesses whose names were given by him, and wanted to examine certain other persons as witnesses. A few months thereafter, the appellant passed the impugned order of dismissal and required him to pay Rs. 549/- on account of certain commodities allegedly misappropriated by him.

The employee's petition under Article 226 for the issue of a writ of certiorari was rejected by a single Judge. The Division Bench allowed the writ on the ground that the Corporation which was required to act in a quasi-judicial manner failed to give an opportunity of being heard to the dismissed employee and that therefore the order of dismissal was bad.

On appeal, the appellant contended that Regulation 16 providing for an enquiry and giving an opportunity to an employee against whom an enquiry was to be held for misconduct had not come into force when the respondent was dismissed and, therefore, he had no statutory status and no locus-standi to maintain the writ which in substance was for specific performance of a contract of service.

Dismissing the appeal

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HELD: (Per Sarkaria, J.)

1. The impugned order of dismissal was bad in law and had been rightly set aside by the High Court [781 F]

(a) Regulations defining duties, conduct and conditions of its employees framed by statutory bodies have the force of law. The form and content of contract with a particular employee being prescriptive and statutory, the statutory bodies have no free hand in framing the terms and conditions of service to their employees, but are bound to apply them as laid down in the

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regulations. The regulations give the employees a statutory status and impose obligations on the statutory authorities, and that they cannot deviate from the conditions of service laid down therein. There is no personal element in public employment and service. Whenever employees rights are affected by a decision taken under statutory powers the

court would presume the existence of a duty to observe the rules of natural justice and compliance by the statutory body with rules and regulations imposed by the statute. [779 E-G]

Sukhdev Singh v. Bhagat Ram [1975] 3 SCR 619 referred to

In the instant case the appellant was a statutory body and, therefore, even if at the time of dismissal the statutory regulations had not been framed or had not come into force, employment being public employment, the employer could not terminate the employee's services without due enquiry in accordance with the regulations in force or in the absence of any regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The respondent was employed by the Corporation in exercise of the powers conferred on it by the statute and, therefore, the Corporation's power to dismiss the respondent from service was derived from this statute. The court would presume the existence of a duty on the part of the dismissing authority to observe rules of natural justice and to act in accordance with the spirit of the regulation which was then on the anvil and came into force shortly after the dismissal. Secondly, in the instant case no regular departmental enquiry was held. The order of dismissal was passed summarily after perusing the employee's explanation. The rules of natural justice require that the dismissed employee should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means an opportunity to cross-examine the witnesses relied upon by the Corporation and an opportunity to lead evidence in defence of the charge as also the show-cause notice for the proposed punishment. Such an opportunity was denied to the respondent. [780 G-H; 781 A-D]

Executive Committee of U.P. State Warehousing Corporation Ltd. v. chandra Kiran Tyagi [1970] 2 S.C.R. 250; Ramana Dayaram Shetty v. The International Airport Authority of India & Ors. A.I.R. 1979 S.C. 1628 referred to.

2. The High Court was in error in directing payment of full back wages to the dismissed employee. [783 E]

3(a) In exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an appellate tribunal. It does not review the evidence upon which the inferior Tribunal proposed to base its conclusion; it simply demolishes the order which it considers to be without jurisdiction or manifestly erroneous but does not substitute its own view for the view of the inferior tribunal. In matters of employment while exercising its supervisory jurisdiction under Article 226 of the Constitution over the orders and quasi-judicial proceedings of an administrative authority culminating in dismissal of an employee, the High Court should ordinarily, in the event of the dismissal being

found illegal, simply quash the same and should not further give a positive direction for payment to the employees full back wages (although as a consequence of the annulment of the dismissal the position as it obtained immediately before the dismissal is restored. [782 F-H]
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(b) Whether an employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the tribunal. One of the important factors to be considered in determining whether reinstatement should be with full back wages and with continuity of employment is to see if after the termination of his employment the employee was gainfully employed elsewhere. [783 D-E]

In the instant case the employee did not raise an industrial dispute nor did he invoke the jurisdiction of the Labour Court or Industrial Tribunal but moved the High Court under Article 226 primarily on the ground of violation of the principles of natural justice. [783B-C]

Chinnappa Reddy, J. (concurring).

There is hardly any distinction, on principle, between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a corporation set up under a statute or incorporated but wholly owned by the Government. The desire to achieve the objectives enumerated in the preamble to the Constitution has resulted in intense governmental activity in manifold ways. Today, the Government either directly or through corporations set up by it or owned by it, owns or manages a large number of industries and institutions. These agencies and instrumentalities, corporations or companies have become the biggest employers in the country. There is no good reason why if the Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealing with its employees, the Corporations set up or owned by the Government should not be equally bound and why instead, such Corporations should become citadels of patronage and arbitrary action. To confine the applicability of the equality clauses, in relation to matters of employment, strictly to direct employment under the Governments, in a country like ours is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a court so as to enforce a contract of employment and denies him the protection of Articles 14 and 16. Employees in public sector often discharge the onerous duties as civil servants and participate in activities vital to the country's economy. Many enactments have declared persons in the service of local authorities, government companies and statutory corporations, as public servants and extended to them the protection which is extended to civil servants from

suits and prosecutions. It is, therefore, but right that the independence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants. [784 D-785 A-F]

Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr. [1975] 3 S.C.R. 619; Ramana Dayaram Shetty v. The International Airport Authority of India & Ors. AIR 1979 S.C. 1628 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 274 of 1970.

Appeal by Special Leave from the Judgment and Order dated 6-8-1969 of the Allahabad High Court in Special Appeal No. 4/67.

M. N. Phadke and Naunit Lal for the appellants.

A. K. Sen, E. C. Agarwala, R. Sathish and V. K. Pandita for the Respondent.

The following Judgments were delivered by SARKARIA, J.-Uttar Pradesh State Warehousing Corporation (for short, the Corporation), has preferred this appeal by special leave against an appellate judgment, dated August 6, 1969, of a Division Bench of the High Court of Allahabad. It arises out of these facts :

V. N. Vajpayee, respondent herein, was employed as a Warehouseman with the Corporation and at the relevant time was posted at the Kanpur Warehouse. There was a complaint of theft, misappropriation of stocks and various other irregularities against the respondent. A preliminary inquiry was held by the Managing Director of the Corporation and charges were framed against him and served upon him on November 28, 1960, requiring him to submit his explanation and to indicate the evidence, if any. On receiving the charge-sheet, the respondent addressed a communication, requesting the Managing Director to furnish him with certain papers, which were accordingly furnished. Thereafter, the respondent submitted his explanation on January 19, 1961. In this explanation, he specifically demanded that he wanted to cross-examine certain witnesses, the particulars of which were mentioned by him. He further gave the names and particulars of certain other witnesses, stating that he wanted to examine them, in defence. Nothing happened thereafter till April 18, 1961, on which date the Managing Director passed an order dismissing the respondent from service with effect from the date of his suspension. Later on, a demand was made from the respondent, requiring him to remit a sum of Rs. 549.61 due to the Corporation on account of certain commodities said to have been misappropriated by the respondent on account of short realisation of storage charges by him.

> The respondent then filed a Writ Petition (No. 87 of 1962) under Article 226 of the Constitution, in the High Court praying for a writ of certiorari to quash the order of his dismissal on the ground that it was violative of the principles of natural justice, inasmuch as he had not been given an opportunity to cross-examine the witnesses and to establish his innocence. He further prayed for a direction that the Corporation be restrained from recovering the sum of Rs. 549.61 from him.

In the counter-affidavit, the appellants stated that the respondent had also cross-examined the witnesses. It was further urged that there had also cross-examined the witnesses. It was further urged that there was no regulation provided for conducting an inquiry in a particular manner, and, therefor, the remedy of the respondent was by way of a suit and he had no locus standi to invoke the extra-ordinary jurisdiction of the Court under Article 226 of the Constitution. It was further pleaded that the writ petition was delayed and should have been thrown out on that score, also.

The writ petition was heard by a learned Single Judge of the High Court, who dismissed it, holding that the Corporation was not required to act in a quasi-judicial manner and that the provisions of Article 311 of the Constitution were not applicable to the facts of the case.

Aggrieved, the respondent carried a special appeal to a Division Bench of the High Court, which has reversed the judgment of the learned Single Judge, and has held that the Corporation was required to act in a quasi-judicial manner and, therefore, the writ petition was maintainable. The Division Bench remanded the case for a decision on merits. After the remand, the learned Single Judge by his judgment, dated December 7, 1966, allowed the writ petition, holding that the principles of natural justice had been violated. He, therefore, quashed the order of the respondent's dismissal, but refused to grant an injunction restraining the appellant for realizing Rs. 549.61 from the respondent. The Corporation again preferred a Special Appeal No. 4 of 1967 to a Division Bench of the High Court, which dismissed that appeal by a judgment, dated August 6, 1969. Hence this appeal by the Corporation.

The main contention of the learned counsel for the appellants is that at the relevant time, Regulation 16 providing for an enquiry and giving an opportunity to the employee had not come into force; consequently, the respondent had no statutory status and had therefore no locus standi to maintain the writ petition. It is submitted that the only remedy of the respondent was to file a suit for damages on account of his alleged wrongful dismissal. Support for this contention has been sought from a decision of this Court in Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi(1). Reference has also been made to Sirsi Municipality v. Cecelia Kom Francis Tellis.(2) On the other hand, Shri A. K. Sen, appearing for the respondent, submits that since the decision of this Court in U.P. State Warehousing Corporation (ibid), the law has undergone a change. It is pointed out that the appellant is a Corporation constituted under a statue and is owned and controlled by the State Government and its employees.

therefore, have a statutory status. It is argued that even in the absence of Regulation 16 providing for a departmental enquiry, the appellant was bound to hold an enquiry and to give, in compliance with the rules of natural justice, full and fair opportunity to the respondent to defend himself and repel

the charges levelled against him. It is maintained that such an opportunity was denied to him because he was not allowed to examine witnesses cited by him in defence. Reference in connection with the proposition propounded has been made to Sukhdev Sing & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.(1) We will first notice Chandra Kiran Tyagi's case, which is the sheet-anchor of the appellants' arguments. The facts of that case were somewhat similar. Tyagi was a Warehouseman in the employment of the U.P. State Warehousing Corporation Limited. After receiving Tyagi's explanation, the Enquiry Officer did not take any evidence in respect of any charge. Instead, he met various persons and collected information, and gave his findings on the various charges on the basis of the enquiries made by him and the records. Even the information so collected was not put to Tyagi. On the basis of those findings of the Enquiry Officer, Tyagi was dismissed from service. Tyagi filed a suit challenging his dismissal. He prayed for a declaration for reinstatement on the ground that the relationship was one of personal service. Speaking through Vaidialingam, J. this Court held that a declaration to enforce a contract of personal service will not normally be granted. It was noted that there are three exceptions to this rule : (i) appropriate cases of public servants who have been dismissed from service in contravention of Article 311, (ii) dismissed workers under industrial and labour law; and (iii) when a statutory body has acted in breach of a mandatory obligation imposed by a statute. It was further held that though the impugned order was made in breach of the regulation contrary to the terms and conditions of the relationship between the appellant (employer) and the respondent (employee), but, it would not be in breach of any statutory obligation, because, the Act does not guarantee any statutory status to the respondent; nor does it impose any obligation on the appellant in such matters. Therefore, the violation of regulation 16(3) as alleged and established in that case, could only result in the order of dismissal being held to be wrongful, and in consequence, making the appellant liable for damages, but could not have the effect of treating the respondent as still in service or entitling him to reinstatement.

The authority of the rule in Tyagi's case, to the effect, that an employee of such a statutory body even if it be owned and managed by the Government does not enjoy a statutory status, appears to have been eroded by the later decisions of this Court, particularly the pronouncement in Sukhdev Singh's case (ibid). The statutory bodies in that case were : Oil and Natural Gas Commission, Industrial Finance Corporation and Life Insurance Corporation. All the three bodies were created under separate stututes enacted by the Central Legislature. It was clear from the Oil and Natural Gas Commission Act, 1954, that the Commission created by it, acts as an agency of the Central Government. Similarly, by virtue of the Industrial Finance Corporation Act, 1948, the Finance Corporation is under the control and management of the Central Government. The Life Insurance Corporation is similarly owned and managed by the Government and can be dissolved only by the Government in view of the provisions of the Life Insurance Act, 1956. All the three statutes constituting the three statutory corporations enabled them to make regulations which provide, inter alia, for the terms and conditions of employment and services of their employees. Questions arose : (i) whether the regulations have the force of law, and (ii) whether the statutory corporations are `State' within the meaning of Article 12 of the Constitution. Ray, C.J., speaking for himself and Chandrachud and Gupta JJ., held that the regulations framed by these statutory bodies for the purpose of defining the duties, conduct and conditions of its employees have the force of law. The form and content of the contract with a particular employee is prescriptive and statutory. The

notable feature is that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. They are bound to apply the terms and conditions as laid down in the regulations. These regulations are not only binding on the authority but also on the public. They give the employees a statutory status and impose obligations on the statutory authorities, who cannot deviate from the conditions of service.

It was further made clear that an ordinary individual, in the case of master and servant contractual relationship, enforces breach of contract, the remedy being damages because personal service is not capable of enforcement. In the case of statutory bodies, however, there is no personal element whatsoever because of the impersonal character of the bodies. In their case, the element of public employment and service and the support of statute require observance of rules and regulations. At page 634 of the Report, the learned Chief Justice significantly reiterated that "whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and com-

pliance with rules and regulations imposed by statute". The Court then referred to U.P. Warehousing Corporation and Indian Airlines Corporation cases and held that these decisions were in direct conflict with an earlier decision of this Court in Narainda Barot v. Divisional Controller, S.T.C.,(1) and were wrongly decided. The Court followed the decision in Sirsi Municipality (ibid).

Mathew J. in his separate but concurring judgment, pointed out how the concept of the State has undergone drastic changes in recent years. A State is an abstract entity and can act only through the instrumentality or agency of natural or juridicial persons. With the advent of a welfare State the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character For this reason, a policy of public administration through separate Corporations which would operate largely according to business principles and be separately accountable, was evolved. Such public corporations constituted under enactments, became a third arm of the Government. The employees of public corporation are not civil servants. In so far as public corporations fulfil public tasks on behalf of the Government, they are public authorities and, as such, subject to control by Government. The public corporation being a creation of the State is subject to the constitutional limitation as the State itself.

The Court thus with a majority of 4-1 held that the statutory bodies then under consideration were `authorities' within the meaning of Article 12 of the Constitution and though their employees were not servants of the Union or of a State, yet they had a statutory status.

The appellant is a Corporation constituted under the Uttar Pradesh State Warehousing Corporation (Act 28) of 1956, which was subsequently replaced by the Central Act 58 of 1962. It is a statutory body wholly controlled and managed by the Government. Its status is analogous to that of the Corporations which were under consideration in Sukhdev Singh's case (ibid). The ratio of Sukhdev Singh's case, therefore, squarely applies to the present case. Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also the employment of the respondent was public employment and the statutory body, the employer, could not terminate the services of its employee without due enquiry in accordance with the statutory Regulations, if any

in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The respondent was employed by the appellant-Corporation in exercise of the powers conferred on it by the statute which created it. The appellants' power to dismiss the respondent from service was also derived from the statute. The Court would therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross- examine the witnesses relied upon by the appellant- Corporation and an opportunity to lead evidence in defence of the charge as also a show-cause notice for the proposed punishment. Such an opportunity was denied to the respondent in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (Opposite Party No.

1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the Opposite Party No. 1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him. A regular departmental enquiry takes place only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after perusing the respondent's explanation. The rules of natural justice in this case, were honoured in total breach. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court.

Before passing on to the next question we may in fairness mention, that Mr. Asok Sen had cited two more decisions, also. The first was a recent judgment of the House of Lords in Melloch. v. Aberdeen Corporation(1), wherein Lord Wilberforce in his speech (at pages 1595-1596 of the Report) observed that in cases in which there is an element of public employment or service, or support by statute or something in the nature of an office or a status, which is capable of protection, then irrespective of the terminology used, and even though in some inter parties aspects the relationship may be called that of master and servant, there may be essential procedural requirement to be observed on grounds of natural justice. The second decision is Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.(1) In Ramana Dayaram Shetty's case (ibid) Bhagwati, J. after making an exhaustive survey of the decisions of this Court and of American Courts, summarised some of the factors which are considered to determine whether a Corporation is an agency or instrumentality of Government. We do not think it necessary to burden this judgment by a detailed discussion of these cases because in the instant case, all the material factors exist which show beyond doubt that the Uttar Pradesh State Warehousing Corporation constituted under the Central Act 28 of 1956, is an agency or instrumentality of the Government, and the relationship between the Corporation and its employees is not purely that of master and servant, founded only on contract. Indeed, it was not seriously disputed that the respondent was in public employment, and the Corporation is an authority within the meaning of Article 12 of the Constitution.

Further contention of the learned counsel for the appellants is that even if the dismissal of the respondent was wrongful, the High Court could only quash the same, but it could not in the exercise of its certiorari jurisdiction under Article 226 of the Constitution give the further direction that the employee should be reinstated in service with full back wages. It is maintained that in giving this further direction, the High Court had overleaped the bounds of its jurisdiction.

There appears to be force in this contention. It must be remembered that in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an appellate tribunal. It does not review the evidence upon which the inferior tribunal proposed to base its conclusion; it simply demolishes the order which it considers to be without jurisdiction or manifestly erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal. In other words, the offending order or the impugned illegal proceeding is quashed and put out of the way as one which should not be used to the detriment of the writ petitioner. Thus in matters of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the order and quasi-judicial proceeding of an administrative authority-not being a proceeding under the industrial law/labour law before an industrial/labour tribunal-culminating in dismissal of the employee, the High Court should ordinarily. in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored), such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court. The instant case is not one under Industrial/Labour Law. The respondent employee never raised any industrial dispute, nor invoked the jurisdiction of the Labour Court or the Industrial Tribunal. He directly moved the High Court for the exercise of its special jurisdiction under Article 226 of the Constitution for challenging the order of dismissal primarily on the ground that it was violative of the principles of natural justice which required that his public employment should not be terminated without giving him a due opportunity to defend himself and to rebut the charges against him. Furthermore, whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the tribunal. If after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these two fold reasons, we are of opinion that the High Court was in error in directing payment to the employee full back wages.

For the foregoing reasons while upholding the judgment of the High Court with regard to the quashing of the order of dismissal of the respondent on the ground of its being invalid, we delete the direction for payment to the respondent full back wages. Excepting this modification, the appeal is dismissed. However, in the circumstances, the appellant-Corporation shall pay the costs of the respondent in this Court.

CHINNAPPA REDDY, J.-The respondent-employee was dismissed from service. The employer dismissed him, without observing the principles of natural justice. This has been found by the High

Court who quashed the order of dismissal in a proceeding under Art. 226 of the Constitution. The employer has appealed. The employer claims that a declaration to enforce a contract of personal service cannot be granted by the Court. The only remedy of the employee, he pleads, is to file a suit for damages for wrongful dismissal. The answer of the employer is that the employer is a statutory Corpora-

tion whose employees have statutory status, and that the employer is bound by the regulations made under the statute as also to observe the principles of natural justice. Breach of the regulations or failure to observe the principles of natural justice entitles the employee to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

The question whether breach of statutory regulations or failures to observe the principles of natural justice by a statutory Corporation will entitle an employee of such Corporation to claim a declaration of continuance in service and the question whether the employee is entitled to the protection of Arts. 14 and 16 against the Corporation were considered at great length in Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.(1) The question as to who may be considered to be agencies or instrumentalities of the Government was also considered, again at some length, by this Court in Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.(2) I find it very hard indeed to discover any distinction, on principle, between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a Corporation, set up under a statute or incorporated but wholly owned by the Government. It is self evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure `social, economic and political justice', to preserve `liberty of thought, expression, belief, faith and worship', and to ensure `equality of status and of opportunity'. That is the proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense Governmental activity in manifold ways. Legislative and executive activity have reached very far and have touched very many aspects of a citizen's life. The Government, directly or through the Corporations, set up by it or owned by it, now owns or manages, a large number of industries and institutions. It is the biggest builder in the country. Mammoth and minor irrigation projects, heavy and light engineering projects, projects of various kinds are undertaken by the Government. The Government is also the biggest trader in the country. The State and the multitudinous agencies and Corporations set up by it are the principal purchasers of the produce and the products of our country and they control a vast and complex machinery of distribution. The Government, its agencies and instrumentalities, Corporations set up by the Government under statutes and Corporations incorporated under the Companies Act but owned by the Government have thus become the biggest employers in the country. There is no good reason why, if Government is bound to observe the equality clauses of the constitution in the matter of employment and in its dealings with the employees, the Corporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confirm the applicability of the equality clauses of the constitution, in relation to matters of employment, strictly

to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a Court so enforce a contract of employment and denies him the protection of Arts. 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In growing realization of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the service of local authorities, Government companies and statutory corporations as public servants and, extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants.

I agree with what has been said by my brother Sarkaria J. I have added a few lines to emphasise some aspects of the problem.

P.B.R. Appeal dismissed.