Executive Committee Of U.P. State ... vs Chandra Kiran Tyagi on 8 September, 1969

Equivalent citations: 1970 AIR 1244, 1970 SCR (2) 250, AIR 1970 SUPREME COURT 1244, 1970 LAB. I. C. 1044, (1970) 1 S C J 780, 1969 SERVLR 799, 1970 (1) SCJ 790, 20 FACLR 17, 38 FJR 39, 1970 2 SCR 250, 1970 (1) LABLJ 32

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, J.M. Shelat

PETITIONER:
EXECUTIVE COMMITTEE OF U.P. STATE WAREHOUSINGCORPORATION, LI

Vs.

RESPONDENT:
CHANDRA KIRAN TYAGI

DATE OF JUDGMENT:
08/09/1969

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.

CITATION:
1970 AIR 1244 1970 SCR (2) 250
1970 SCC (2) 838
CITATOR INFO :
RF 1971 SC1828 (10)
R 1972 SC1450 (4)
RF 1973 SC 855 (20,21,42)
O 1975 SC1331 (26,31,187,189)
R 1976 SC 888 (14,31)
F 1977 SC 747 (17)
RF 1980 SC 840 (7,8,10,11)
RF 1987 SC1422 (10)
RF 1989 SC 341 (11)
RF 1990 SC 415 (16)
RF 1991 SC1525 (10)

ACT:
Agricultural Produce (Development and Warehousing) Corporation Act (28 of 1956), s. 54 and Regulations made

thereunder--Regulation 16(3)--Dismissal of employee without following procedure--If employee entitled to reinstatement or only damages--Specific Relief Act (1 of 1877). s. 21.

HEADNOTE:

Under s. 28 of the Agricultural Produce (Development and Warehousing) Corporation Act, 1956, the appellant was established as the Warehousing Corporation of the State of U.P. Section 54 of the Act gives power to 'a Warehousing Corporation to make regulations not inconsistent with the Act and the Rules made thereunder and the regulations are to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Regulation 11 deals with termination of the service of an employee other than by way of punishment, while regulation 16 deals with penalties. Under regulation 16(3) an employee, on whom the punishment of dismissal is to be imposed, has to be given an opportunity, of tendering his explanation in writing, for cross-examining the witnesses against him, and for producing evidence in his defence.

The respondent was a warehouseman in the employment of the appellant. Certain charges were framed against him and he was suspended pending enquiry into. the charges. After receiving his 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 the respondertl. On the basis of those findings of the Enquiry Officer the respondent was dismissed from service. He. filed a suit challenging the order of dismissal on the ground that there was a violation of regulation 16(3) and prayed for a declaration that the order'was null and void and that he was entitled to be reinstated with full pay and other emoluments. On the questions whether: (1) the dismissal was not in accordance with regulation 16(3); and (2) the relationship being one of personal service the respondent was entitled to the declaration for reinstatement.

HELD: (1) The termination of the respondents service was not under regulation 11, but under regulation 16; and the procedure prescribed by regulation 16(3) was not followed by the Enquiry Officer in the present case.

(2) A declaration to enforce a contract of personal service will not normally be granted. The! exceptions are: (i) appropriate cases of public servants who have been dismissed from service in contravention of Art. 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 statue. [267 G]

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In the present case, a breach has been committed by the appellant of regulation 16(3) as the procedure indicated therein was not followed. The order of dismissal however was passed by the authority who could pass the order.' Such an order made in breach of the regulations would only be contrary to the terms and conditions of 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 this 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. [271 B--E]

Dr. S, B. Dutt v. University of Delhi, [1959] S.C.R. 1235 and S.R. Tewari v. District Board, Agra, [1964]3 S.C.R. 55, followed.

Life Insurance Corporation of India v. Sunil Kumar Mukherjee, [1964] 5 S.C.R. 528, distinguished.

Vine v. National Dock Labour Board, [1956] Barber v. Manchester Hospital Board, [1958] 1 All E.R.322 and Francis v. Municipal Councillors etc. [1962] 3 All E.R.633, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 559 of 1967. Appeal by special leave from the judgment and decree dated October 25, 1966 of the Allahabad High Court in Second Appeal No. 4275 of 1965.

S.T. Desai, Naunit Lal and D.N. Misra, for the appellant. B.R.L. lyengar, S.K. Mehta, and K.L. Mehta, for the respondents.

The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by special leave, by the defendant-appellant, is directed against the decree and judgment, dated October 25, 1966 of the Allahabad High Court in Second Appeal No. 4275 of 1965 holding that the order, dated March 10, 1964 passed against the respondent dismissing him from service, null and void and that he is entitled to. be reinstated with full pay and emoluments. The respondent-plaintiff originally entered service with the appellant as a Technical Assistant in November 1958 and later he was promoted to the post of Warehouseman on October 15, 1959. He was confirmed in 1962 in the said post. Certain charges were framed against the respondent and pending the enquiry into those charges he was placed under suspension on September 9, 1963. After an enquiry the respondent was found guilty and in consequence dismissed from service of the appellant by order dated March 10, 1964. The respondent instituted Civil Suit No. 201 of 1964 challenging the order of dismissal. According to him

the various allegations made against him were vague and had not been established and there has been no proper enquiry conducted against him. The enquiry, according to him, was contrary to the principles of natural justice without giving him an opportunity to place his defence and it was also held in disregard of cl. 16 of the Regulations framed by the appellant. He also claimed that he was entitled to the protection under Art. 311 of the Constitution. On these allegations the plaintiff prayed for a declaration that the order, dated March 10, 1964 .dismissing him from service, was null and void and that he was entitled to be reinstated with full pay and other emoluments.

The appellant-defendant, in its written statement, pleaded that the enquiry into the charges leveled .against the plaintiff was made properly and in compliance with the provisions of the Regulations and the plaintiff-respondent had been given full opportunity to participate. in the enquiry which he also did. The appellant pleaded that the' respondent was no.t entitled to the protection of Art. 311 of the Constitution. It also pleaded that the order of dismissal passed against the respondent was perfectly justified and that the suit was false and had to be dismissed with costs.

The trial Court held that the plaintiff was no.t entitled to the protection under Art. 311 of the Constitution. But it held that in conducting the enquiry, the Enquiry Officer did not comply with the provisions of sub-cl. (3) of el. 16 of the Regulations framed by the appellant and that there had been a violation of the rules of natural justice. In consequence the trial Court held that the order dismissing the plaintiff was illegal; but in considering the question as to whether the plaintiff was also entitled to the further relief claimed by him, viz., of reinstatement with full pay and emoluments, the trial Court was of opinion that in view of s. 21 of the Specific Relief Act, 1877 the plaintiff was not entitled to that relief. Ultimately the Trial Court granted a declaration, by its judgment dated March 24, 1965 that the order of dismissal dated March 10, 1964 was void and ineffective and decreed the suit with costs.

The appellant challenged this decision in appeal before the Civil Judge, Manipuri, in Civil Appeal No. 69 of 1965. The respondent filed a Memorandum of Cross Objections challenging the decree of the trial Court declining his relief for reinstatement with full pay. The learned Civil Judge, by his decree and judgment dated September 4, 1951 dismissed the appeal and allowed the Memorandum of Cross-Objections filed by the respondent. The result was that the plaintiff's suit was decreed, granting both the reliefs as prayed for by him. The appellant again challenged the decrees of both the lower Courts before the Allahabad High Court in Second Appeal No. 4275 of 1965. The High Court has, by its judgment dated October 25, 1966 dismissed the appeal. It agreed with the findings recorded by the two Subordinate Courts that the enquiry proceedings are vitiated by a violation of the principles of natural justice and also not being in accordance with Regulation no. 16 (3). Regarding the declaration for reinstatement, the High Court was of the view that the rules and the; Regulations framed under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (Act 28 of 1956) (hereinafter called the Act) had statutory force and that as there had been a violation of Regulation no. 16 (3) , the plaintiff was entitled to the declaration. Mr. S.T. Desai, learned counsel for the appellant Corporation raised two contentions: (1) A full and fair opportunity was given to the respondent in the enquiry held against him and there has been no violation of Regulation no. 16(3). The finding on this point by the High Court and the Subordinate Courts is erroneous. (2) Even on the basis that the enquiry is vitiated by non-complianCe with the provisions

of Regulation no. 16(3) framed by the Corporation, the relief declaring that the plaintiff is entitled to be reinstated in service with full pay should not have been granted as by doing so the Courts have departed from the normal rule that the specific performance of a contract of personal service will not be enforced. In any event, counsel urged that there are no. special circumstances justifying the grant of that relief in this case.

Mr. B.R.L.Iyengar, learned counsel for the respondent, pointed out that the findings that the enquiry held was not in accordance with Regulation no. 16(3) and that there has been a violation of the principles of natural justice, are concurrent findings recorded by all the Courts and those:

> findings are fully supported by the evidence on record. Regarding the second contention, Mr. Iyengar pointed out that when an order of dismissal has been passed in violation of a statutory provision--as in this case the Regulations--a declaration granted in favour of the respondent is justified.
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> The first contention raised by Mr. Desai relates to the:
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> question as to whether the enquiry held against the plaintiff was in accordance with sub-el. (3) of Regulation 16 of the Regulations framed by the appellant and whether the enquiry is vitiated by a violation of the principles of natural justice. All the Courts have held that the respondent is not entitled to the protection under Art. 311 of the Constitution. Therefore the only question for consideration is whether the enquiry has been properly conducted in accordance with Regulation no.

16(3). As pointed out by Mr. Iyengar, the findings on facts on this point have been recorded concurrently by all the Courts as against the appellant.

It is now necessary to briefly refer to some of the provisions of the Act under which the appellant has been constituted and is functioning, as also the Regulations framed by the Board. The Act is one to provide for the incorporation and regulation of corporations for the purpose of development and warehousing of agricultural produce on cooperative principles and for matters connected therewith. Section 2 defines certain expressions, including 'appropriate Government', 'Board', 'Central Warehousing Corporation', 'prescribed', 'State Warehousing Corporation' and 'Warehousing Corporation'. The expression 'Board' means the National Co-operative Development and Warehousing Board established under s. 3. 'State Warehousing Corporation' (the appellant is one such) means a Warehousing Corporation for a State established under s. 28. Section 3 provides for the establishment by the Central Government of a Corporation by the name of National Co-operative Development and Warehousing Board. Section 17 provides for the Central Government establishing a Corporation by the name of Central Warehousing Corporation. Section 28 provides for the State Government establishing a Warehousing Corporation for the State. As pointed out earlier, the appellant is the Warehousing Corporation for the State of Uttar Pradesh, established under this section. Section 34 lays down the functions of a State Warehousing Corporation. Section 35 provides for the; composition of the Executive Committee of a State Warehousing Corporation. Section 52 gives power to the appropriate Government to make rules to carry out the purposes of the

Act and sub-s. (2) deals with the various matters in respect of which rules may be framed without prejudice to the generality of the power contained in sub-s. (1). Sub-s. (3) provides that all rules made by the appropriate Government under s. 52 shall, as soon as may be after they are made, be laid before both Houses of Parliament or the Legislature of the State as the case may be. Section 53 gives power to the Board to make regulations not inconsistent with the Act and the rules made thereunder, and those regulations may provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Apart from the generality of this power, sub-s. (2) specifies the various matters regarding which regulations may be framed. Section 54 gives power to the Warehousing Corporations to make regulations. not inconsistent with the Act and the rules made thereunder, and those regulations may provide for a11 matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Apart from this general power, sub- s. (2) enumerates the various matters in respect of which regulations can be framed. Under s. 54 the appellant Corporation had framed regulations. Those regulations. are the Uttar Pradesh State Warehousing Corporation Regulations, 1961 (hereinafter called the Regulations). We shall now proceed to consider the provisions of the Regulations. Clause 1 (3) of the Regulations provides that the Regulations. shall apply to all employees of the Corporation and to the personnel employed on contract in respect of all matters not regulated by the contract. Clause 2 defines the various expressions. Chapter II of the Regulations deals with the appointing authority, probation and termination of service. Regulation 11 deals with termination of service. Chapter IV deals with discipline'. Subcl. (1) of regulation 16 provides for the imposition of penalties as against an employee found guilty of the various acts mentioned therein. Sub-cl. (3) of regulation 16, which is relevant for the present purpose, is as follows:

> "(3) No punishment other than that specified in sub-para (1)(a), (1)(b) or (1)(c) shall be imposed on any employee without giving him an opportunity for tendering an explanation in writing and cross examining the witnesses against him, if any, and of producing evidence in defence:
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> Provided that punishment to an employee on deputation from the Central Government , a State Government or a Government Institution shall be imposed only in accordance with the procedure and rules laid down in this behalf in his parent service."

Sub-paras (1)(a), (1) (b) and (1) (c) referred to therein are the penalties of (a) fine; (b) censure; and (c) postponment or stoppage of increments or promotion. In this case as the punishment imposed is one of dismissal of the appellant should have followed the procedure indicated in sub-cl. (3) of regulation 16 extracted above. Under this sub-clause, it has to be noted that an employee on whom a punishment other than that specified therein is to be imposed, has to. be given an opportunity of tendering his explanation in writing and cross-examining witnesses against him, if any, and producing evidence in defence. The grievance of the respondent regarding the conduct of the enquiry, apart from other objections, is 'that materials collected by the Enquiry Officer behind his back were not made: known to him and that information had been taken into account for holding him guilty. His further objection is that he did not get any opportunity to adduce evidence in his defence and that the various persons from whom information had been gathered by the Enquiry

Officer were not tendered for cross-examination by him. It is not necessary for us to go elaborately into the various proceedings connected with the giving of the charge-sheet, the explanation offered by the appellant and the final conclusions arrived at by the Enquiry Officer on the basis of which the respondent has been dismissed from service. As pointed out by Mr. Iyengar, all the Courts have concurrently held that the enquiry is vitiated and has been held contrary to regulation 16(3). It is enough therefore, in the circumstances, to note that the Enquiry Officer Sri F.A. Abbasi who has given evidence has admitted that he did not take in evidence in respect of any charge and that he considered the records as sufficient for giving findings on the charges. He has also admitted that he met various persons and collected information and that information has been incorporated in his enquiry report. He has further admitted that the information so collected by him was not put to the plaintiff, and has stated that he based his findings in the report against the respondent on the basis of the enquiries made by him of the police and other persons. In the: face of these admissions, it is idle for Mr. Desai to urge before us, that the findings of the High Court and the Subordinate Courts that there has been a violation of regulation 16(3) in the enquiry proceedings cannot be sustained. IOn the other hand, we are of opinion that the finding is amply .justified by the evidence on record.

Mr. Desai made a feeble: attempt to sustain the order dated March 10, 1964 as one passed under regulation 11 and not under regulation 16. We have no hesitation in rejecting this contention. Regulation 11, as we have already pointed out, is in Chapter II, and deals with termination of service simpliciter and, even in such circumstances, it provides in the case of a permanent employee that his services can be terminated only after apprising the employee of the reasons therefore and asking him to furnish explanation and after consideration of the explanation and then giving the employee a final notice to. show cause against the proposed termination of service. This clause, in our opinion, deals with a termination, other than by way of punishment, and the procedure indicated therein is quite simple. On the other hand, regulation 16 appears in Chapter IV dealing with discipline. An order of dismissal passed after following the procedure indicated therein, attaches a stigma on the employee concerned. Having issued a charge-sheet and made a farce of an enquiry and then dismissed the employee after holding him guilty, cannot certainly be considered to be termination of the employee's service under regulation 11. That action was taken by way of disciplinary proceedings. is clear from the fact that an order suspending the respondent, pending the enquiry, was passed on November 9, 1963. The same order further directed that the respondent will receive only subsistence allowance during the period of suspension. The order of suspension must be related to regulation 17 and the grant of subsistence allowance must be referred to .regulation 18, both of which occur in Chapter IV relating to discipline. Therefore it follows that the first contention of Mr. S.T. Desai cannot be accepted. Mr. Desai next urged that even on the basis that the order of dismissal had been passed in violation of regulation 16(3), the decree granting a declaration for reinstatement of the respondent with full pay and emoluments is illegal as amounting to enforcing a contract of personal service. Alternatively Mr. Desai urged that in any event there are no special circumstances existing in this. case justifying the grant of such a declaration. Mr. Desai developed his contentions as follows: The relationship between the appellant and the respondent is that of a master and servant. A breach of regulation 16(3) will at the most result in the order of dismissal being wrongful. The remedy, if any, of the aggrieved party in such a case will only be a claim for damages for breach of contract. The counsel further urged that Courts have. jurisdiction to declare the decision of a statutory body given in violation of a mandatory statutory obligation relating to

dismissal of a 'servant as ultra vires and void. Even in such circumstances, it was urged, the jurisdiction to grant a declaration which will result in continuity of service is granted only under very special circumstances which require the departure from the general rule that a contract of service will not be specifically enforced. According to the counsel, the rules framed under s. 52 of the Act by the appropriate Government may have statutory force and effect if they are of such-a nature as to require mandatory compliance; but, according to him, the regulations framed by a Warehousing Corporation do not create any such statutory obligation of a mandatory nature. Hence a termination of service by an employer even in breach of conditions of service laid down by the regulations would only attract the general law of master and servant and cannot result in a declaratory decree about continuity of service being granted. In any event, the counsel urged that a declaration should not have been granted as there are no special circumstances warranting the grant of such a relief in this case. Counsel pointed out that the respondent entered service only in November 1958 and he has been removed from service in 1964 and it is not claimed by the respondent that he will not be able to take up service elsewhere. In short, according to Mr. Desai, the grant of the. relief of declaration by way of reinstatement is erroneous.

Mr. B.R.L. Iyengar, learned counsel for the respondent, urged that the regulations have been framed by the Warehousing Corporation under s.. 54. One of the matters in respect of which regulations may be framed is in regard to the conditions of service of the employees of a Warehousing Corporation. It is by virtue of that power that the regulations--called Staff regulations-have been framed. By virtue of cl. (3) of regulation 1, they apply to all employees. of the Corporation and to the personnel employed on contract in respect of all matters not regulated by the contract. Those. regulations deal with various matters relating to the service conditions of the employees. Chapter IV deals with discipline and cl. (3) of regulation 16 makes it imperative and obligatory on the Corporation to comply with 'those provisions before punishment other than those punishments specified therein is imposed against an employee. The regulations, according to Mr. Iyengar, having been framed under the Act, have statutory effect and they impose statutory obligation of a mandatory nature on the appellant Corporation in respect of the procedure to be adopted for taking disciplinary action. On the findings recorded by all the' Courts, it is clear that there has been a violation of cl. (3) of regulation 16, in which case it follows that the respondent was entitled to get a declaration that the order of dismissal is void and of no effect. Counsel also pointed out that the respondent's services have been arbitrarily and mala fide terminated by the appellant and ;therefore, there are sufficient circumstances. for departing from the normal rule that a contract of personal service will not be specifically enforced.

The question as to when and under what circumstances a relief by way of declaration regarding continuity of service, after holding that an order of dismissal is void or ultra vires, can be given, has been considered both m England and here. The leading decision of the House of Lords which is generally invoked in support of the view that such a declaration can be granted is the decision in Vine' v. National Dock Labour Board(1). This decision has also been referred to by this Court in some of its decisions, to which we shall refer presently. The case before the House of Lords in the decision referred to above arose under the following circumstances. The plaintiff was a registered dock (1) [1956] 3 All E.R. 939.

worker employed in the reserve pool by the National Dock Labour Board under a scheme set up under the Dock Workers (Regulation of Employment) Order, 1947. In 1948, the National Board, approved the delegation of powers to disciplinary committees set up by local boards. The plaintiff failed to obey a valid order to report for work with a company of stevedores and, in consequence, the local board instructed their disciplinary committee to hear the case. The disciplinary committee, having heard the case, gave notice in writing to the plaintiff terminating his employment. The plaintiff instituted the action claiming damages for wrongful dismissal and also prayed for a declaration that the order of dismissal was illegal, ultra vires and invalid. The Court of first instance granted both damages and declaration; but on appeal, by the National Board, the Court of Appeal struck out the declaration granted to the plaintiff. The plaintiff appealed to the House of Lords against the striking out of the declaration and the National Board cross-appealed against the finding that the: dismissal was invalid and also against the award of damages. The House of Lords held that the declaration granted by the trial Judge was properly made as the order of dismissal was a nullity since the local board had no power to delegate its. disciplinary functions. The cross-appeal filed by the National Board was dismissed. Viscount Kilmuir, L.C., in considering the question regarding the grant of declaration, observes at p. 943 that the discretion in ,,ranting a declaratory judgment should not be exercised save for good reason and then, summarising the reasons for granting the declaration, states at p. 944:

> "First, it follows from the fact that the plaintiff's dismissal was invalid that his name was never validly removed from the register, and he continued in the employ of the National Board. This is an entirely different situation from the ordinary master and servant case. There, if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the register being, in law, a nullity, he continued to have the fight to be treated as a registered dock worker with all the benefits which, by statute, that status conferred on him. It is, therefore, right that with the background of this scheme, the court should declare his rights."

At p. 948, Lord Keith of Avonholm states:

> "This is not a straightforward relationship of master and servant. Normally, and apart from the interven-
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> tion of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful but could only sound in damages.
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> Here we are concerned with a statutory scheme of employment .... The scheme gives the dock worker a status. Unless registered, he is deprived of the opportunity of carrying on what may have been his lifelong employment as a dock worker, and he has a right and interest to challenge any unlawful act that interferes with this, status. If the actings here complained of were a nullity, Mr. Vine (hereinafter called 'the

> plaintiff'), in my opinion, has a clear right to have that fact declared by the court."

It will be noted that the House of Lords, in the decision referred to above, have emphasized that orders striking off the plaintiff from the: register was not considered a simple case of a master terminating the services of the servant, but, on the other hand, was treated as one affecting the status of the plaintiff and whose services have been terminated by an authority which had no power to so terminate and, as such, the order was treated as void. The House of Lords have also emphasised that due to the intervention o.f the statute which safeguards the right of the dock worker, the order not being in accordance with the statute, must be treated as a nullity. It was under

> those circumstances that the House of Lords restored the decree of the Court of first instance granting a declaration regarding the continuity of service of the plaintiff therein. It must again be emphasised that the order, the validity of which was considered by the House of Lords, was treated as a nullity.
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> The question whether a dismissed employee can ask for a declaration that his. employment had never been validly terminated, again came up for consideration in Barber v. Manchester Hospital Board(1). In that case a Regional Hospital Board passed an order terminating the plaintiffs employment as a medical consultant in the hospital. The plaintiff brought an action against the Board claiming declaration that his employment had never been validly determined and he also claimed damages for breach of contract or wrongful dismissal. The Court held that the plaintiff's contract with the Board was. one between master and servant and the order of termination of his services. could not be treated as a nullity. In this view the plaintiff's claim for a declaration that his employment had never been validly determined was not granted; but the plaintiff was awarded damages (1) [1958] 1 All E.R. 322.

for breach of contract. It was contended on behalf of the plaintiff that when passing the order terminating his services the procedure indicated in cl. 16 of the terms and conditions of service of hospital medical staff has been violated by :he original hospital Board and therefore the order of termination never became effective and the plaintiff continued to be still in service as the order was a nullity. On behalf of the plaintiff reliance was placed on the decision in Vine's Case(1). Repelling this contention, Barry, J., observes, at p. 331:

> "... I am unable to equate this case to the circumstances which were being considered by the Court of Appeal and the House of Lords in Vine v. National Dock Labour Board(1). There the plaintiff was working under a code which had statutory powers, and, clearly, in those circumstances, all the lords of appeal who dealt with the case in the House of Lords took the view that the case could not be dealt with as though it were an ordinary master and servant claim in which the rights of the parties were regulated solely by contract. Here, despite the strong statutory flavor attaching to the plaintiff's contract, I have reached the conclusion that in essence it was an ordinary contract between master and servant and nothing more."

In this view the Court finally held that the plaintiff's only remedy was to recover damages as for breach of contract.

A similar question regarding the right of a dismissed employee to get a declaration of his right to continue in employment came up for consideration before the Privy Council in Francis v. Municipal Councillors etc.("). The plaintiff in that case was in the service of the Municipal Councillors of Kuala Lumpur and, by s. 16(5) of the Municipal Ordinance (Extended Application) Ordinance, 1948, the President had power to dismiss him. The plaintiff was dismissed. The Privy Council held that the plaintiff had been wrongly dismissed and that his remedy lay in a claim for damages. The plaintiff sought a further declaration that he had a right to continue in employment notwithstanding the order of dismissal. Rejecting this claim the Privy Council observed, at p. 637:

> "In their Lordships' view, when there has been a purported termination of a contract of service a declaration to the effect that the contract of service still subsists will rarely be made. This is a consequence of the general principle of law that the courts will not grant (1)(1956) 3 E.R. 939.
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> (2) [1962] 3 All E.R. 633.

CI/70--5 specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the court.

In their Lordships' view there are no circumstances in the present case which would make it either just or proper to make such a declaration."

The Privy Council distinguished the particular circumstances that existed before the House of Lords in Vine's case (1) and finally held at p. 638:

> "In their Lordships' view the circumstances of the present case are not comparable with those in Vine's case (1) and are not such as to make it appropriate to give a declaratory judgment in the manner contended for on behalf of the appellant. The appellant's employment must be treated as having in fact come to and end on Oct. 1, 1957 'and the appellant's remedy lay in a claim for damages."

From a review of the English decisions, referred to above, the position emerges as follows: The law relating to master and servant is clear. A contract for personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. This is the normal rule and that was applied in Barber's case (2) and Francis' case (2). But, when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant. This was the position in Vine's

case.(1) The question has also been considered by this Court in certain decisions, to which we will immediately refer. In Dr. S.B. Dutt v. University of Delhi(4) this Court had to consider the legality of an award directing that an order of dismissal was ultra vires, mala fide and of no effect and that the appellant in that case continued to be a Professor of the University. The appellant, Dr. Dutt, who was a Professor in the University of Delhi, was .dismissed from service by the latter. He referred the dispute regarding his dismissal and certain other disputes to arbitration, (1) [1956] 3 All E.R. 939. (2) [1958] 1 All E.R. 322. (3) [1962] 3 All E.R. 633. (4) [1959] S.C.R. 1235.

under s. 45 of the Delhi University Act. An award was made which decided that the appellant's "dismissal was ultra vires, mala fide, and has no effect on his status. He still continues to be a professor of the University". The said award was made a rule of Court by the Subordinate Judge of Delhi. The University of Delhi challenged this decision on appeal and the Punjab High Court, which ultimately heard the appeal, set aside the award on the ground that such a declaration amounted to specific enforcement of a contract of personal service forbidden by s. 21 of the Specific Relief Act and therefore disclosed an error on the face of the award. On appeal, this Court, agreeing with the reasoning of the High Court, observed at p. 1242:

> "There is no doubt that a contract of personal service cannot be specifically enforced. Section 21, cl. (b) of the Specific Relief Act, i 877, and the second illustration under this clause given in the section make it so clear that further elaboration of the point is not required. It seems to us that the present award does purport to enforce a contract of personal service when it states that the dismissal o.f the appellant 'has no effect on his status', and 'he still continues to. be a Professor of the University'. When a decree is passed according to the award, which if the award is unexceptionable, has to be done under s. 17 of the Arbitration Act after it has been flied in Court, that decree will direct that the award be carried out and hence direct that the appellant be treated as still in the service of the respondent. It would then enforce a contract Of personal service, for the appellant claimed to be a professor under a contract of personal service, and so offends. 21 (b)?' On behalf of the appellant, reliance was placed on the decision of the Judicial Committee in The High Commissioner for India v. I. M. Lall (1) in support of the contention that a declaration that the appellant continued in service under the University of Delhi in spite of the order of dismissal was a declaration which the law permitted to be made and was not therefore erroneous. Dealing with this contention and referring to the decision of the Judicial Committee, this Court observed at p. 1244:
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> "That was no.t a case based on a contract of personal service... The declaration did no.t enforce a contract of personal service but proceeded on the basis that the dismissal could only be eff ected in terms of the statute and as that had not been done, it was a nullity, from which the result followed that the respondent had continued in service. All that the Judicial Committee did (1) (1948) L.R. 75 I.A. 225.

in this case was to make a declaration of a statutory invalidity of an act, which is a thing entirely different from enforcing a contract of personal service."

Holding that 'it was not the appellant's case before the arbitrator that the dismissal was ultra vires the statute or otherwise a nullity', this Court ultimately confirmed the judgment of the High Court setting aside the award.

The jurisdiction of the Courts to grant a declaration in a particular case that an order of dismissal is void and that the dismissed employee continues to remain in service, again came up for consideration before this Court in S.R. Tewari v. District Board, Agra(1). In that case, the appellant's service as an Engineer under the District Board, Agra, was terminated by the latter, after giving salary for three months in lieu of notice. The appellant, after having unsuccessfully appealed against the order of termination to the State Government, initiated proceedings under Art. 226 before the Allahabad High Court for a writ of certiorari for quashing the order of the District Board dismissing him from service and also sought a writ in the nature of mandamus commanding the District Board and the State of Uttar Pradesh to treat him as the lawfully appointed engineer, and not to give effect to the order terminating his service. The High Court dismissed the writ petition holding that the employee had been properly dismissed from service. The employee came up to this Court in appeal. On behalf of the District Board, the respondent therein, it was contended that the remedy of the appellant, if any, was only to institute a suit for damages for wrongful termination of employment and that he was not entitled to pray for a declaration that the termination of employment was unlawful and a consequential order for restoration in service. The decision in Dr. Dutt's case (2) among other decisions, was relied on in support of this contention. This Court negatived that contention and stated the position in law as follows:

> "Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well recognized exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Art. 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ (1) [1964] 3 S.C.R. 55.
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> (2) [1959] S.C.R. 1236.

the servant whom it does. not desire to employ. Similarly under the industrial law, jurisdiction of the labour and industrial tribunals to. compel the employer to employ a worker, whom he does not desire to employ, is recognized. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

Vine's Case(1) which was relied on before the Court was distinguished on the ground that the purported order of dismissal therein which was set aside was a nullity since the local Board in that case had no power to delegate its disciplinary function. Again, the decision in Dr. Dutt's Case(2) was stated to be not case in which the invalidity of an act done by the University on the ground that it infringed a statutory provision fell to be determined and the rights and obligations of the parties rested in contract and therefore the award was declared to be one contrary to the rule contained in s.

21(b) of the Specific Relief Act and hence void. This Court, wound up the discussion in Tewari's Case(3) as follows, at p. 62:

> "The jurisdiction to declare the decision of the Board as ultra vires exists, though it may be exercised only when the Court is satisfied that departure is called for from the rule that a contract of service will not ordinarily be specifically enforced."

On facts, this Court held that the order of dismissal of the appellant before them was proper and justified. From the two. decisions of this Court, referred to above, the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are: To grant such a declaration in appropriate cases regarding (1) A public servant, who has been dismissed from service in contravention of Art. 311. (2) Reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals. (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute.

The case of the respondent before: us does not come under either the first or the second category. The question then is: Is he entitled to relief under the third category ?

(2) [1956] 3 All E.R. 939. (2) [1959] S.C.R. 1236. (3) [1964] 3 S.C.R. 55.

Mr. S.T. Desai pointed out that by the appellant conducting an enquiry and passing an order of dismissal in violation of regulation 16(3), it cannot be stated that it has acted in breach of any mandatory provision of the Act resulting in the order being declared as void or ultra vires. The non-compliance with the regulations, at the most, will result in the order of dismissal being wrongful attracting the normal rule in such matters of making the appellant liable for damages. Even otherwise., this is not a proper case for grant of the declaration asked for by the plaintiff. In our opinion, the position taken up by Mr. Desai finds support in the decisions referred to above. Mr. B.R.L. Iyengar, learned counsel for the respondent, placed considerable reliance on the decision of this Court in Life Insurance Corporation of India v. Sunil Kumar Mukherjee(1). According to him, in that case, an order of termination of service passed by the Life Insurance Corporation of India, terminating the services of certain employees in breach of regulations framed by it under s. 49 of the Life Insurance Corporation Act, 1956 (Act XXXI of 1956) (hereinafter called the Insurance Act) has been held to be void. Therefore counsel urges that applying the same analogy, a breach of regulations in the case before us has the same effect as the breach of a statutory obligation and, if so, the High Court was justified in granting the declaration asked for. We are of opinion that the decision relied on by Mr. Iyengar does not lay down any such proposition. In that decision, in respect of certain officers governed by s. 11 (1) and 11 (2) of the Insurance Act, certain orders terminating their services were passed by the Life Insurance Corporation of India. The orders were challenged by the employees on the ground that they were passed contrary to cls. 1O(a) and 10(b) of the: order passed by the Central Government under s. 11 (2) of the Insurance Act, which is called the blue order. The contention on behalf of the Life Insurance Corporation was that the orders were passed in accordance with the regulations framed by the Life Insurance Corporation under s. 49 of the Insurance Act, read with. cl. 11 of the blue order. The High Court held that the orders of dismissal were in breach of cls. 10(a) and 10(b) of the blue order, and therefore the orders were

invalid. The result of the grant of this relief was that the employees continued to be in service. This Court confirmed the decision of the High Court, and having considered the rights conferred by s. 11 (1) and 11 (2) of the Insurance. Act, held that the employee:s of the Insurers whose controlled business had been taken over, became employees of the Life Insurance Corporation and that their terms. and conditions of service continued until they were altered (1) [1964] 5 S,C.R. 528 by the Central Government and that if the alteration made by the Central Government was not acceptable, they were entitled to' leave the employment of the Corporation and for payment of compensation as provided by s.. 11(2). In exercise of the powers conferred under s. 11(2) of the Insurance Act, the Central Government issued an order, known as the Life Insurance Corporation Field Officers (Alteration of Remuneration and other Terms and Conditions of Service) Order, 1957 on December 30, 1957. In 1962, the designation 'Field Officer' was changed into 'Development Officer'. Clauses 10(a) and 10(b) of this order have been set out by this Court in the above decision. CI. 11 of this order prescribed that the pay and allowances of the officers concerned Was to be determined in . accordance with the principle.s that may be: laid down by the Life Insurance Corporation by regulations made under s. 49 of the Insurance Act. The Life Insurance Corporation, as envisaged under el. 11 of the order, framed regulations under s. 49 of the Insurance Act, dealing with various matters. It. also issued a circular which was made part of the regulations and it was the basis of this circular that the Life Insurance Corporation took action and terminated the services of the employees concerned. Tiffs Court held that the provisions contained in s. 11(2) of the Insurance Act are paramount and over-ride any contrary provisions contained in the order issued by the Central Government or the regulations framed by the Life Insurance Corporation. Next to the Insurance Act, the rules framed by the Central Government, which include the order issued under ss. 11 (2) of the Insurance Act, will prevail, but the provisions of the Central Government Order will have to be subject to s. 11 (2) of the Insurance Act. Next in order co.me the regulations of the Life Insurance Corporation under s. 49 and those regulations must not be inconsistent with the Insurance Act or the rules framed thereunder.

This Court held that the Circular issued by the Corporation, which had the effect of a regulation passed by it under s. 49 of the Insurance Act, must be read along with the provisions of ss. 11 (1) and 11 (2) of the Insurance Act and cl. 10 of the order issued by the Central Government; and so read, the conclusion reached by this Court was that a termination of service of an officer, contemplated under the circular issued by the Life Insurance Corporation can be effected only in the manner prescribed by cl. 10 of the order issued by the Central Government. In view of the fact that cl. 10 of the order issued by the Central Government had not been complied with, the order terminating the services of the employees was held to be invalid. It will be seen that the services, as pointed out by this Court, of the employees whose cases were under consideration, had been crystallized by the statute--the Insurance Act--in s. 11 (1) and 11 (2); By virtue of the powers conferred by s. 11 (2), the Central Government issued the order on December 30, 1957. CI. 10 of this order had clearly indicated the procedure to be adopted for terminating the services of such employees. Therefore, the employees had their rights safe guarded by the Insurance Act read with the order issued by the Central Government and it cast a statutory obligation on the Life Insurance Corporation to adopt a particular procedure if the services of those employees were to be terminated. By not complying with the provisions of el. 10 of the order of the Central Government, which is really related to s. 11 of the Insurance Act, the Life Insurance Corporation must be

considered to have acted in gross violation of the mandatory provisions of the statute. Therefore, it was not as if that the employees were there seeking to. enforce a contract of personal service, but their grievance which was accepted by the Court, was that the order terminating their services was a nullity as it had not been effected in terms of the statute. In our opinion, therefore, this decision does not support the contention of the respondent.

Mr. Iyengar referred us also to the decision of this Court in The State of Uttar Pradesh v. Babu Ram Upadhya(1) but that decision need not detain us because that deals with a member of the public service who has been given protection under the Constitution. Such cases stand apart. Mr. Iyengar referred us to a decision of a learned Single Judge of the Gujarat High Court reported as Tata Chemicals Ltd. v. Kailash(2). The question that arose for consideration was regarding the validity of an order of dismissal by an employer of an employee contrary to' the standing orders. The learned Judge has expressed the view that a breach of the standing orders constitutes a breach of a statutory provision and therefore the order of dismissal is a nullity. It is not necessary for us to consider the correctness of that decision because the dispute between the parties in that case arose under Industrial Law and we have already pointed out that one of the exceptions to the Common Law is under Industrial Law where Labour and Industrial Tribunals have jurisdiction to compel an employer to employ a worker whom he does not desire to employ. Having due regard to the principles discussed above. we are of opinion that the High Court was not justified in granting the declaration that the order dated March 10, 1964 dismissing the (I) [1961] 2 S.C.R. 679. (2) A.I.R. 1964 Gujarat 265.

respondent from service is null and void and that he is entitled to be reinstated in service with full pay and other emoluments. As pointed out by us, the regulations are made under the power reserved to. the Corporation under s. 54 of the Act. No doubt they lay down the terms and conditions of relationship between the Corporation and its employees. An order made in breach of the regulations would be contrary to such terms and conditions, but would not be in breach of any statutory obligation, as was the position which this Court had to deal with in the Life Insurance Corporation Case(1). In the instant case, a breach has been committed by the appellant of regulation 16(3) when passing the said order of dismissal, inasmuch as the procedure indicated therein has not been followed. The Act does not guarantee any statutory status to the respondent, nor does it impose any obligation on the appellant in such matters. As to whether the rules framed under s. 52 deal with any such matters, does not arise for consideration in this case as the respondent has not placed any reliance on the rules and he has rested his case only on regulation 16(3). It is not in dispute that, in this case, the authority who can pass an order of dismissal has passed the same. Under those circumstances a violation of regulation 16(3), as alleged and established in this case, can only result in the order of dismissal being held to be wrongful and, in consequence, making the appellant liable for damages. But the said order cannot be held to be one which has not terminated the service, albeit wrongfully, or which entitles the respondent to ignore it and ask for being treated as still in service. We are not concerned with the question of damages, because no such claim has been made by the respondent in these proceedings.

In this view, the judgment and the decree of the High Court. in so far as they declare that the order dated March 10, 1964 is null and void and that the respondent continues to be in the service of the

appellant, are set aside and this appeal allowed, to that extent. In the circumstances of the case, there will be no order as to costs.

V.P.S. Appeal allowed.

(1) [1964] 5 S.C.R. 528.