Executive Committee Of Vaish Degree ... vs Lakshmi Narain And Ors on 12 December, 1975

Equivalent citations: 1976 AIR 888, 1976 SCR (2)1006, AIR 1976 SUPREME COURT 888, 1976 2 SCC 58, 1976 LAB. I. C. 576, 1976 2 SCR 1006, 1976 2 LABLJ 163, 1976 2 SCWR 588, 1976 (1) LABLN 474, (1976) 1 SERV L R 213

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, Hans Raj Khanna, P.N. Bhagwati

PETITIONER:
EXECUTIVE COMMITTEE OF VAISH DEGREE COLLEGE SHAMLI ANDOTHERS

Vs.

RESPONDENT:
LAKSHMI NARAIN AND ORS.

DATE OF JUDGMENT12/12/1975

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KHANNA, HANS RAJ
BHAGWATI, P.N.

CITATION:
1976 AIR 888 1976 SCR (2)1006
1976 SCC (2) 58
CITATOR INFO :
AP 1976 SC1073 (1)
RF 1976 SC2216 (7)
F 1977 SC 747 (17)
R 1981 SC 122 (5)
RF 1981 SC 212 (54)
F 1987 SC1422 (10,14)
D 1989 SC1607 (11)
D 1990 SC 415 (16,22)
F 1991 SC1525 (9)

ACT:
Master and servant-Managing Committee of a college terminating services of Principal of college-Violation of rule requiring Vice-Chancellor's approval-Rights of Principal.
Specified Relief-Declaration of continuing in service

when may be granted.

HEADNOTE:

The appellant is the Executive Committee of an Educational Institution (a college) registered under the Registration of Co-operative Societies Act, and the college was affiliated to a University. The provisions of the University Act require that every decision of the management of an affiliated college to remove from service a teacher shall be reported forthwith to the Vice-Chancellor and subject to the provisions contained in the Statutes made by the University, shall not take effect unless approved by the Vice-Chancellor.

The respondent was appointed by the appellant as a Principal of the college but no agreement, as prescribed by the University Act, and the Statutes was executed between the parties. Two years after his appointment. the appellant served a notice on the Principal directing him not to discharge the duties of the Principal and shortly thereafter terminated his services. Thereafter, the respondent did not work as Principal. The respondent filed a suit contending that he must be deemed to be continuing in service, as there was no sanction of the Vice-Chancellor for the termination of his services, and prayed for an injunction restraining the appellant from interfering with his duties as Principal of the institution.

The trial Court dismissed the suit but the first appellate Court reversed the decision and the High Court affirmed the decision of the first appellate Court.

In appeal to this Court, it was contended that: (1) the appellant was not a statutory body; (2) in the absence of an agreement the requirement regarding the approval by the Vice-Chancellor would not apply and the termination of the respondent's services would be governed by the usual master and servant relationship. (3) there are no special circumstances for enforcing the contract of personal service; and (4) the present case was not a fit one for granting the reliefs prayed for, they being equitable reliefs and in the discretion of the Court.

Allowing the appeal to this Court,

^

HELD. (Per Khanna and Fazal Ali, JJ.).

(1) Merely because the appellant followed certain statutory provisions of the University Act or the Statutes made thereunder, it cannot be held to be a statutory body. [1014 A-B]

(a) Before an institution can be a statutory body, it must be created by or under the statute and owe its existence to a statute. There is a well-marked distinction between a body which is created by the statute and a body which, after having come into existence, is governed in

accordance with the provisions of the statute. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions, it cannot be said to be a statutory body. [1013 D-1014 A]

1007

Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Others, [1975] 3 S.C.R. 619, followed.

(b) Merely because it was affiliated to the University. that there were certain mandatory provisions of the University Act which were binding on the appellant; and the appellant was governed by the Statutes of the University would not be sufficient to alter the character and nature of the appellant and convert it into a statutory body. [1014 B-C]

(i) The appellant had an independent status having been registered under the Registration of Co-operative Societies Act and was a self-governed or an autonomous body. It was affiliated to the University merely for the sake of convenience and mainly for the purpose of recognition of its courses of study by the University. [1014 C-D]

(ii) All that Statute 14A of the University required was that the Managing Committee of the college must co-opt the Principal of the college and a representative of the teachers. By co-opting them the appellant did not lose its independent status but continued to remain a non-statutory and , autonomous body. [1011 F-G]

(iii) Similarly, the fact that the Statutes of the University were adopted by the appellant and it was, as a matter of convention, bound to follow the provisions of the University Act, would not clothe the appellant with a statutory status or character. The adoption of the Statutes was only for better governance and administration and extension of the educational activities of the institution. [1014 G-H] D

Sabhajit Tewary v. Union of India & ors. [1975] 3 S.C.R. 616 and Kumari Regina v. St. Aloysius Higher Elementary School & Anr. [1971] Supp. S.C.R. 6, followed.

(2) The case of P.R. Jodh v. A.L. Pande [1965] 2 S.C.R. 713, on which the High Court relied, is distinguishable. The High Court has not considered the basic facts present in that case, but which are not present in the instant case, namely, (a) the governing body in Jodh's case was itself a creature of the statute; (b) in the instant case the Statutes did not apply proprio vigore but only after an agreement was executed between the employer and the employee as required by those provisions. and (c) no agreement was ever executed between the parties in the prescribed form. [1018 C-D]

Vidya Ram Mishra v. Managing Committee, Shri Jai Narain

College, [1972] 3 S.C.R. 320, 326. followed.

(3)(a) A contract of personal service cannot ordinarily be specifically enforced and a Court, normally, would not give a declaration that the contract subsists and that the employee even after having been removed from service, can be deemed to be in service against the will and consent of the employer. This rule is subject to three exceptions, (i) where a public servant is sought to be removed from service in contravention of the provisions of Art. 311. (ii) Where a worker after dismissal is sought to be reinstated under Industrial Law. and (iii) Where a statutory body acts in breach or violation of the mandatory provisions of the Act. [1020 E-G]

Sirsi Municipality v. Kom Francis [1973] 3 S.C.R. 348.. Indian Airlines Corporation v. Sukhdeo Rai [1971] Supp. S.C.R. 510, 514. 3. R. Tewari v. District Board, Agra and Anr., [1964] 3 S.C.R. 55, 59, Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi. [1970] 2 S.C.R. 250, 265 and Bank of Baroda v. Jewan Lal Mehrotra [1970] 2 L.L.J. 54, 55, referred to.

Since the appellant is not a statutory body, the present case does not fall within any of the excepted categories and the respondent is not entitled to any declaration or injunction. [1020 G-H]

(b) Assuming that the Sirsi Municipality case has extended the scope of the exceptions to public or local bodies even if they are non-statutory bodies so that, the appellant though a non-statutory body, will still be bound by the statutory
1008
provisions of law, in view of the special circumstances of this ease, it will not be a proper exercise of discretion to grant a decree for declaration and injunction in favour of the respondent The grant of specific relief is, under ss. 20 and 34 of the Specific Relief Act, 1963 as well as under the Common Law, purely discretionary and can be refused where the ends of justice do not require the relief to be granted. The exercise of discretion applies as much to a Court exercising writ jurisdiction as well as in suits. The relief has to be granted by the Court according to sound legal principles and ex debito justitiae. The Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. The Court must keep in mind the well-settled principles of justice and fairplay and should exercise the discretion only if the ends of justice require it. [1021 C-D. 1022 A. 1023 H-1024 D, E-F; 1025 F]

Jerome Francis v. Municipal Councillors of Kuala Lumpur (1962) W.L.R. 1411. A. Francis v. Municipal Councillors of Kuala Lumpur (1962) 3 All. E.R. 633, 637 and R.T. Rangachari v. Secretary of State for India in Council, L.R. 64 I.A. 40, 53-54, applied.

Mahant Indra Narain Das v. Mahant Ganga Ram & Anr., AIR

1965 All. 683, 684 and Bhairabendra Narayn Bhup v. State of Assam, A.I.R. 1953 Assam 162, 165, referred to.

Hill v. C.A. Parsons & Co. Ltd. (1971) 3 All. E.R. 1345, distinguished. ed.

In the present case, neither the first appellate Court nor the High Court while decreeing the respondent's suit, considered whether it is a fit case in which the discretion should be exercised in favour of the respondent. [1024 D-E]

(i) The respondent served the institution only for two rears. If relief as prayed for is granted to him, he would have to be paid salary and interest for nine years which would amount to more than a lakh of rupees, even though he had not done any work for the college during those years. and (ii) though the respondent is not at fault, the payment of such a large sum would undoubtedly work serious injustice to the appellant because it is likely to destroy the very existence of the Institution. [1024 G-1025 B]

Therefore, instead of granting the relief to the respondent as prayed for, it he is allowed to withdraw and keep the sum of about Rs. 21,000/- deposited by the appellant by virtue of interlocutory orders towards the salary of the respondent, it will vindicate his stand and compensate him for any hardship caused to him by terminating his services and will put a stamp of finality to any further litigation between them [1025 C-F]

(Per Bhagwati, J.):

This Court has laid down three exceptions to the rule under the Common Law that the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ: (1) In the case of a public servant dismissed from service in contravention of Art. 311; (2) Under the Industrial Law. and (3) When a statutory body has acted in breach of a mandatory obligation imposed by a statute. [1030 B-C, F-G]

Dr. S.B. Dutta v. University of Delhi A.I.R. 1958 S.C. 1050. Life Insurance Corporation of India v. Sunil Kumar Mukherjee A.I.R. 1961 S.C. 847. Mafatlal Barot v. Divisional Controller, State Transport, Mahsana A.I.R. 1966 S.C. 1364. B.N. Tewari v. District Board, Agra, A.I.R. 1964 S.C. 1680. U.P. State Warehousing Corporation v. C.K. Tyagi [1970] 2 S.C.R. 250. Indian Airlines Corporation v. Sukhdeo Rai [1971] Supp. S.C.R. 510 and Bank of Baroda v. Jewan Lal Mehrotra [1970] 2 L.L.J. 54. referred to.

But, these 3 exceptions formulated in the statement of law laid down by this Court, are not intended to be and cannot be exhaustive. The categories of exceptions to the general rule should not be closed, because, any attempt at rigid and exhaustive formulation of legal rules is bound to stifle the growth of law and cripple its capacity to adapt itself to the changing needs of society. In fact, in the Sirsi Municipality v. Kom Francis [1973] 3 S.C.R. 348, this Court

1009

pointed out that the third exception applied not only to employees in the service of "bodies created under statutes" but also to those in the employment of "other public or local authorities. This exception is really intended to cover cases where by reason of breach of mandatory obligation imposed by law, as distinct from contract, the termination of service is null and void so that there in law no repudiation at all. [1031 C-F]

Where the relationship between the employer and his employee is governed by statute or statutory regulations the termination of the service of the employee may, in a given situation, be null and void, and in that event, it would not have the effect of putting an end to the contract and the employee would be entitled to a declaration that his service is continuing. What the employee would be claiming in such a case is not enforcement of contract of personal service but declaration of statutory invalidity of an act done by the employer. [1029 A-D]

In the present case, it is not necessary to decide whether the appellant is or is not statutory body or a public authority or whether the Statutes of the University had the force of law conferring rights on the respondent as in the case of P. R. Jodh v. A. L. Pande [1965] 2 S.C.R. 713, or that they only set out the terms and conditions which conferred no legal rights unless and until they were embodied in a contract between the appellant and the respondent, as in the case of V. R. Mishra v. Managing Committee, Shri Lal Narain College [1972] 3 SCR 320, 326, because, the termination of the respondent's services was ineffective and inoperative as it was not approved by the Vice-Chancellor as required by the University Act. The language of the section of the University Act is absolute and peremptory and provides in unambiguous terms that the termination shall be ineffective and inoperative unless approved by the Vice-Chancellor; and this rule of law, enacted by the Legislature, operates irrespective of whether the management is or is not a statutory body. When the Court refuses to recognise the termination as valid, it only enforces the law and there is no question of transgressing the principle that a contract of personal service cannot be enforced. [1031F, 1032 D]

Therefore, the termination of the services of the respondent by the appellant was ineffective and void and did not operative to put an end to the employment. Hence, ordinarily the respondent, whose termination of service is thus null and void or ineffective by reason of a statutory provision or subordinate legislation which has the force of law, should be awarded a declaration that he continues; in service and the fact that he was in employment only for a short period of two years should be no ground for refusing him the declaration. [1032 D-F]

But in view of the Peculiar facts and circumstances this case, and since the grant of tho relief is in the

discretion of the Court, it must be held that this is not a proper case for the grant of such relief. If the relief of declaration and injunction is granted to the respondent, it will involve the appellant in a financial liability of mere than a lakh of rupees and that would wipe out the educational institution of the appellant or in any event seriously cripple it and that, in its turn, would prejudicially affect the interests of the student community. That is an important consideration which the Court cannot fail to take into account in exercising its discretion. Moreover, the aggregate amount of about Rs. 21,000/- deposited by the appellant in Court would be a fair and just compensation to the respondent. [1032 F-G, H-1033 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 1 543 of 1974.

Appeal by special leave from the Judgment and order dated the 30th July, 1974 of the Allahabad High Court in Second Appeal No. 2973 of 1972.

S.V. Gupte, J. P. Goyal, P. C. Gupta and G. S. Chatterjee for the appellant.

M.K. Ramamurthi and O.P. Rana for Respondent No. 1. D.P. Mukherjee for Respondents 3-5.

The Judgment of H. R. Khanna and S. Murtaza Fazal Ali, JJ. was delivered by Fazal Ali, J., P. N. Bhagwati, J. gave a separate opinion.

FAZAL ALI, J.-This appeal by special leave is directed against the judgment of the Allahabad High Court affirming the decree of the First Additional Civil & Sessions Judge, Muzaffarnagar by which the plaintiff/respondent's suit for injunction was decreed.

The appeal arises in the following circumstances. The appellant which is the Executive Committee of Vaish Degree College in the District of Muzaffarnagar was registered under the Registration of Cooperative Societies Act as an institution for imparting education. The affairs of the College were managed by the Executive Committee of the Vaish College which is the appellant in this case. In the year the Vaish Degree College was affiliated to the Agra University and as a consequence thereof the College agreed to be governed by the provisions of the Agra University Act and the statutes and ordinances made thereunder. With the establishment of the Meerut University some time in the year 1965 the Vaish Degree College got affiliated to the Meerut University. The plaintiff/respondent was appointed as Principal of the College on permanent basis with effect from July 1, 1964 and his appointment as Principal was formally approved by the Vice-Chancellor of the Agra University. Two years later it appears that differences arose between the Executive Committee of the College and the plaintiff/respondent resulting in allegations and counter allegations and culminating in a notice served by the Executive Committee on October 24, 1966 on the plaintiff/respondent directing him

not to discharge the duties of the Principal and another letter was sent to defendant No. 4 a member of the staff of the College to officiate as Principal in place of the plaintiff/respondent. This was fol lowed up by a counter-notice by the plaintiff/respondent to the Executive Committee that the notice sent to him was illegal and the respondent also asked defendant No. 4 not to assume charge of the Principal. On March 12, 1967, the Executive Committee by a resolution terminated the services of the plaintiff/respondent with effect from October 24, 1966 and this resolution was amended by another resolution on March 29, 1967. Even before the formal resolution terminating the services of the plaintiff/respondent was passed it appears that the plain tiff had filed the present suit on October 28, 1966 before the Court of the First Additional Civil & Sessions Judge, Muzaffarnagar which was transferred for disposal to the Court of the Munsif, Kairana.

The plaintiff's case was that on being affiliated to the Agra University and thereafter to the Meerut University and adopting the provisions of the Acts and the statutes of the said Universities the appellant College became a statutory body and had no jurisdiction to terminate the services of the plaintiff/respondent without seeking the previous approval of the Vice-Chancellor. The plaintiff further submitted that after his appointment he entered into an agreement with the Executive Committee in accordance with the statutes of the University and 1 appellant was bound by the terms and provisions of the statutes under which his services could not be terminated without the previous approval of the Vice-Chancellor. The plaintiff therefore contended that his removal from service was without jurisdiction and he must be deemed to have continued in service. He also made some allegations of bias and mala fides against the Executive Committee and some other persons with which we are not concerned in this appeal. The plaintiff accordingly prayed for an injunction restraining the defendants from interfering with his duties as the Principal of the College. It appears, however, from the record that after the notice given to the plaintiff / respondent by the Executive Committee the plaintiff was bereft of all his powers and in spite of his attempts to get into the College and work as Principal he was not allowed to do so which led to some criminal proceedings also. It is, therefore, clear that at least after the resolution of the Executive Committee was passed termination the services of the plaintiff he has not been working as Principal of the College uptil now. This position is not disputed before us by counsel for the parties.

The defence was that the Executive Committee was not a statutory body and therefore was not bound by the statutes and the provisions of the University Acts although as a matter of convention it had agreed to follow the same. The defendant/appellant also denied the allegations of the plaintiff/respondent that the Executive Committee had entered into any agreement or contract of service with the plaintiff/respondent. The defendant further alleged that as the plaintiff/respondent remained habitually and perpetually absent from his duties without the permission of the concerned authority the defendant/appellant was compelled to dispense with the services of the plaintiff/respondent. In fact the plea taken by the defendant was that the plaintiff himself by his remaining perpetually absent from duties abandoned the service and had put an end to the contract of service and therefore he could not be heard to say that the contract of service still subsisted.

The Trial Court of Munsif, Kairana, framed a number of issues and after considering the evidence and the circumstances, found-(i) that the plaintiff had failed to prove that he ever executed any agreement with the defendant/appellant; and (ii) that the defendant/appellant was not a statutory

body and therefore was not bound by the provisions of the University Acts or the statutes made thereunder. The learned Munsif therefore found that a case for declaration or injunction had not been made out and he accordingly dismissed the suit of the plaintiff.

The plaintiff/respondent went up in appeal against the judgment and decree of the Munsif and the appeal was heard by the First Additional Civil & Sessions Judge, Muzaffarnagar, who by his order dated December 3, 1971, reversed the decision of the Munsif and decreed the plaintiff's suit and granted the injunction prayed for. lt may be noticed that so far as the plea of the plaintiff/respondent that be had executed an agreement with the Executive Committee of the College which formed the basis of the terms of his contract of service was concerned the learned Additional Civil & Sessions Judge also affirmed the finding of the Munsif on this point and held that there was no such agreement. Even before us this finding was not disputed by the learned counsel for the plaintiff/respondent who has proceeded on the assumption that there was no agreement executed between the plain tiff and the defendant as alleged by the plaintiff.

The defendant/appellant filed a second appeal hl the High Court of Allahabad against the decision of the First Additional Civil & Sessions Judge decreeing the plaintiff's suit. The matter was heard by a single Judge who, however, referred the case to a Full Bench framing the following issue:

> "Can the Civil Court grant the relief of injunction in view of the facts and circumstances of the present case ?"

Consequently the matter was placed before the Full Bench of the Allahabad High Court which after hearing the arguments decided the following points in favour of the plaintiff/respondent:

> (1) That the defendant/appellant being a statutory body was bound by the provisions of the University Acts and the statutes made thereunder and therefore the termination of the services of the plaintiff/respondent without obtaining the sanction of the Vice- Chancellor was illegal & invalid; and (2) That in the facts and circumstances of the case, the plaintiff/respondent was entitled to the injunction as prayed for.

The case then came back before the Single Judge who in view of the decision of the Full Bench affirmed the decree of the First Additional Civil & Sessions Judge decreeing the plaintiff's suit with the modification that the suit was decreed only against defendants 2, 4, 6 & 7 but dismissed as against defendants 1 & 5. Hence this appeal by special leave before us.

Mr. Gupte learned counsel for the appellant submitted before us that it was not necessary to go into the complicated facts of the case, because he adumbrated three propositions of law before us which in his opinion were sufficient to decide the case. In the first place it was contended that the finding of the Full Bench which formed the basis of the judgment of the High Court appealed against that the defendant/appellant was a statutory body was legally erroneous; secondly the counsel submitted that even if the appellant was a statutory body as no agreement was executed between the respondent and the appellant the statutes passed by the University would not apply and the

termination of the services of the respondent would be governed by the usual master and servant relationship; and thirdly, it was contended that it is well settled that the courts do not enforce a contract of personal service in the absence of special circumstances as laid by several decisions of this Court, and the case in hand does not fall within any of the exceptions laid down by this Court.

Mr. Ramamurthi learned counsel for the respondent rebutted the arguments of Mr. Gupte and supported the judgment of the Full Bench of the Allahabad High Court that the appellant was a statutory body and therefore the termination of the services of the respondent was legally invalid. It was further contended that in view of the decision of this Court in Sirsi Municipality v. Kom Francis the scope of the exception laid down by this Court in various cases has been extended even to include within its fold non-statutory bodies provided they are public or local bodies which the appellant/defendant was undoubtedly one. Lastly it was submitted that once it is established that the termination of the services of the respondent was legally invalid inasmuch as the sanction of the Vice-Chancellor was not obtained, the declaration that the plaintiff/respondent continued in service and injunction prayed for must be granted as a matter of law. In the course of the arguments, however, the learned counsel for the appellant also suggested that the relief of injunction or declaration being an equitable relief and in the discretion of this Court this was not a fit case in which this discretion should be exercised in favour of the plaintiff/respondent.

We would first deal with the important question, which has been the sheet-anchor of the arguments of the learned counsel for the respondent as also the main basis of the judgment of the Full Bench of the Allahabad High Court, as to whether or not the appellant Executive Committee can be said to be a statutory body in the circumstances of the present case. It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Others this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A. N. Ray, C.J., observed as follows:

> "A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute."

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountain-head of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the

institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body. The High Court, in our opinion, was in error in holding that merely because the Executive Committee followed certain statutory provisions of the University Act or the statutes made thereunder it must be deemed to be a statutory body. In fact the Full Bench of the High Court relied on three circumstances in order to hold that the Executive Committee was a statutory body, viz., (i) that it was affiliated to the Agra University which was established by the statute; (ii) that there were certain mandatory provisions in the Agra University Act which were binding on the Executive Committee; and (iii) that the Executive Committee was governed by the statutes framed by the Agra University. In our opinion, none of these factors would be sufficient to alter the character and nature of the Executive Committee and convert it into a full fledged statutory body. To begin with the Executive Committee had an independent status having been registered under the Registration of Co-operative Societies Act and was a self- governed or an autonomous body. It was affiliated to the Agra University merely for the sake of convenience and mainly for the purpose that the courses of studies prevalent in the College may be recognised by the University.

Statute 11-A of the Agra University Hand-Book (1965-66) runs thus:

> "Each College already affiliated or when affiliated, which is not maintained exclusively by Government must be under the Management of a regularly constituted Governing body (which term includes Managing Committee) on which the staff of the college shall be represented by the Principal of the college and at least one representative of the teachers of the college to be appointed by rotation in order of seniority determined by length of service in the college, who shall hold office for one academic year."

All that the statute of the Agra University required was that the Managing Committee of the College must co-opt the Principal of the College and one representative of the teachers of the college by rotation as members of the Committee. It is manifest that by co-opting these members the Managing Committee did not lose its independent status but continued to remain a non-statutory and autonomous body. Similarly the mere fact that the statutes of the University were adopted by the Managing Committee and it was as a matter of convention bound to follow the statutory provisions of the Act would not clothe the Managing Committee with a statutory status or character. In fact the adoption of the statutes was agreed to by the appellant Executive Committee for the better governance, administration and extension of the educational activities of the institution. In fact an identical argument which forms the basis of the judgment of the Full Bench of the High Court had been advanced before this Court and rejected outright. For instance in Sabhajit Tewary v. Union of India & ors the question was whether the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act, as the present appellant is, was a statutory body. It was urged that because the Council of Scientific and Industrial Research had government nominees as the President of the body and derived guidance and financial aid from the Government, it was a statutory body A. N. Ray, C.J., rebutted these arguments and observed as follows:

"The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researched establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner.

Similar view was taken by this Court in Kumari Regina v. St. Aloysius Higher Elementary School & Anr. where this Court observed as follows:

"But it cannot also be gainsaid that as the Government has the power, to admit schools to recognition and grants in-aid, it can, de hors the Act, lay down conditions under which it would grant recognition and aid. To achieve uniformity and certainty in the exercise of such executive power and to avoid discrimination, the Government would have to frame rules which, however, would be in the form of administrative instructions to its officers, dealing with the matters of recognition and aid. If such rules were to lay down conditions, the Government can insist that satisfaction of such conditions would be condition precedent to obtaining recognition and aid and that a breach or non-compliance of such conditions would entail either the denial or withdrawal of recognition and aid. The Management of a school, therefore, would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. The rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce these rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, Hr such as a teacher aggrieved by some order of the manage-

ment, cannot derive from the rules any enforceable right against the management on the ground of a breach or non compliance of any of the rules."

This is a case which is almost on all fours with the facts of the present case because there the case was whether the school after being recognised by the Government for the purpose of grant was bound to observe the rules.

In Indian Airlines Corporation v. Sukhdeo Rai, it was observed as follows:

> "The fact, therefore, that the appellant- Corporation was one set up under and was regulated by Act XXVII of 1953 would not take away, without anything more, the relation ship between it and its employees from the category of purely master and servant relationship."

The Full Bench of the Allahabad High Court, however, appears to have placed great reliance on the decisions of this Court in Prabhakar Ramakrishna Jodh v. A.L. Pande & Anr. where this Court held that the Governing Body of the College in that case was a statutory body. In this connection, this Court observed as follows:

> "On the other hand, we are of opinion that the provisions of Clause 8 of the ordinance relating to security of the tenure of teachers are part and parcel of the teachers' service conditions and, as we have already pointed out, the provisions of the 'College Code' in this regard are validly made by the University in exercise of the statutory power and have, therefore, the force and effect of law. It follows, therefore, that the 'College Code' creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous."

This case, however, is clearly distinguishable from the facts of the present case. To begin with, in P.R. Jodh's case, this Court was dealing with the College Code which was itself a creature of the statute, namely, the University of Saugar Act. Under ordinance No. 20 Para 1 the Governing body was created by an ordinance passed under the University of Saugar Act. It is, therefore, clear that the statutes are the creature of the Act. Thus the distinction is that in P.R. Jodh's case the Governing Body was the Council of Management established under the Act while here the Managing Committee is not. It is obvious that the Governing Body was created under a statutory provision because the ordinance had undoubtedly a statutory force having been passed under the Act. Para 2(i) (c) of the College Code runs thus:

> "2. (i) In this ordinance, unless there is anything repugnant in the subject or context:-
>
> (c) 'Governing Body' means the Council of Management established under this ordinance for the control and general management of the 'College'."

The Governing Body was, therefore, established under the ordinance itself and had no independent existence at all. Similarly under Para 3 of the ordinance the constitution of the Governing Body was laid down. It is, therefore, clear that not only was the Governing Body of the College established under the ordinance but even the constitution of the said Governing Body was laid down by the ordinance itself and the functions of the Governing Body were clearly defined by Para 4 of ,, ordinance No. 20. The ordinance itself was called the "College Code" which came into legal existence by virtue of the ordinance. In other words, the position is that before ordinance No. 20 was passed under the University Act, the Governing Body had no existence at all. The same, however, could not be said of the present Managing Committee which had its independent existence long before it was affiliated to the Agra University and had also its own constitution, the only exception being that two members had to be taken ex-officio in the Managing Committee. There is, therefore, world of

difference between the nature and manner of the establishment of the Governing Body under the University of Saugar Act and the Managing Committee in the instant case. Further more, this case was noticed and discussed by a later judgment of this Court in Vidya Ram Mishra v. Managing Committee, Shri Jai Narain College and was distinguished. Speaking for the Court, Mathew, J., observed as follows:

> "When once this Court came to the conclusion that the 'College Code' had the force of law and conferred rights on the teachers of affiliated colleges, the right to challenge the order terminating the services of the appellant, passed in violation of clause 8(vi)
>
> (a) of the 'College Code' in a proceeding under Article 226 followed 'as the night the day` and the fact that the appellant had entered into a contract was considered as immaterial.
>
> * * * * On a plain reading of statute 151, it is clear that only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Statute 151 have proprio vigore no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract, they have no vitality and can Confer no legal rights.

Whereas in the case of Prabhakar Ramakrishna Jodh v. A. L. Pande and another-[(1965) 2 S.C.R. 713], the terms and conditions of service embodied in clause 8(vi) (a) of the 'College Code' had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract."

It is, therefore, clear that in P. R. Jodh's case the College Code was by itself a statutory Code so that the provisions of the statute operated proprio vigore and did not depend on the execution of the agreement between the employer and the employee in accordance with the statutes of the University. In the instant case, which is very much like the case in Vidya Ram Mishra (supra) the statute merely enjoined that the agreement between the employer and the employee should be incorporated according to the form and conditions prescribed by the statute and until the said agreement is executed the provisions of the Statute would not apply proprio vigore. The Allahabad High Court no doubt tried to distinguish Vidya Ram Mishra's case, but with due respect, we might observe that the distinction drawn by the High Court is a distinction without any difference. The High Court has not considered the two basic facts which were present in P.R. Jodh's case but which were not present in the instant case, viz., (1) that the governing body in the case dealt with by this Court in P. R. Jodh's case was in itself a creature of the statute; and (2) that in the instant case the statute did not apply proprio vigore but only after an agreement was executed between the employer and the employee in accordance with the terms and conditions of the statute. The High Court also failed to consider that there was a concurrent finding of fact by all the Courts below that the plaintiff/respondent never executed any agreement with the Executive Committee of the College in

the form prescribed by the statutes of the Agra University Act.

Thus in view of the decisions of this Court regarding the circumstances under which the institution can be treated as a statutory body we are unable to agree with the view taken by the Allahabad High Court that the Executive Committee was a statutory body merely be cause it was affiliated to the University or was regulated by the provisions of the University Act or the statutes made thereunder. We accordingly hold that the decision of the Full Bench of the Allahabad High Court on this point is legally erroneous and must be overruled.

This brings us to the next point for consideration as to whether or not the plaintiff/respondent's case fell within the exceptions laid down by this Court to the general rule that the contract of personal service is not specifically enforceable. In this connection as early as 1964, in S.R. Tewari v. District Board, Agra and Anr., this Court observed 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 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 recognised. 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."

To the same effect is the decision of this Court in Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi, where it was observed as follows:

> "From the two decisions of this Court, referred to above, the position in law is that no declaration to enforce a con tract 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;"

In Indian Airlines Corporation v. Sukhdeo Rai (supra) this Court also observed as follows:

> "It is a well settled principle that when there is a purported termination of a contract of service, a declaration, that the contract of service still subsisted, would not be made in the absence of special circumstances because of the principle that courts do not ordinarily grant specific performance of service. This is so, even in cases where

> the authority appointing an employee was acting in exercise of statutory authority. The relationship between the person appointed and the employer would in such cases be contractual, i.e. as between a master and servant, and the termination of that relationship would not entitle the servant to a declaration that his employment had not been validly determined."

To the same effect is the decision of this Court in Bank of Baroda v Jewan Lal Mehrotra where this Court observed as follows:

> "The law as settled by this Court is that no declaration r to enforce a contract of personal service will be normally granted. The well recognised exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Art. 311; (2) where reinstatement is sought of a dismissed worker under the industrial law by labour or industrial tribunals; (3) where a statutory body has acted in breach of a mandatory obligation imposed by statute;"

In the Sirsi Municipality's case the matter was exhaustively reviewed and Ray, J., (as he then was) observed as follows:

> "The cases of dismissal a servant fall under three broad heads, purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal service. Such a declaration is not permissible under the Law of Specific Relief Act.
>
> The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute."

On a consideration of the authorities mentioned above, it is, there fore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions-(i) where a public servant is sought to be removed from service in contravention of the provisions of Art. 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law, and

(iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

In view of our finding that the Executive Committee of the College in the instant case was not a statutory body, the present case does not fall within any of the excepted categories mentioned above, and hence prima facie, the plaintiff/respondent is not entitled to any declaration or injunction. The learned counsel for the respondent, however, placed great reliance on the decision of this Court in Municipality's case (supra) in order to contend that this decision had included within the fold of its exceptions a fourth category, namely, an institution which even though was a non-statutory body, but was a local or a public authority. Reliance was placed particularly on the following observations of Ray, J., as he then was, in that case:

> "The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.
>
> In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute."

Assuming for the sake of arguments, but not deciding that this decision has extended the scope of the exceptions, so that the appellant Executive Committee though a non- statutory body will still be bound by the statutory provisions of law, let us see what is the position. It would appear that under s. 25-C (2) of the Agra University Act corresponding to similar provisions in Kanpur and Meerut Universities Act of 1965 which runs thus:

> "Every decision by the Management of an affiliated college, other than a college maintained by Government, to dismiss or remove from service a teacher shall be reported forthwith to the Vice-Chancellor and subject to provisions to be made by the Statutes shall not take effect until it has been approved by the Vice- Chancellor."

it was incumbent on the Executive Committee of the College to have taken the previous approval of the Vice-Chancellor before terminating the services of the plaintiff/respondent. Reliance was placed by the learned counsel for the respondent on the words "shall not take effect until it has been approved by the Vice-Chancellor". It was urged that there has been an infraction of a mandatory provision of the Act itself which is undoubtedly binding on the appellant Executive Committee and the resolution of the Executive Committee terminating the services of the respondent is not only invalid but completely without jurisdiction, and, therefore, the plaintiff/respondent is entitled to the injunction sought for. It is common ground that the procedure enjoined in sub-s. (2) of s. 25-C of the Agra University Act was not at all followed by the Executive Committee and there can be no doubt that the Executive Committee has been guilty of this default. The question remains whether even if there has been a violation of the mandatory provisions of the statute, should we in the exercise of our discretion grant a declaration or an injunction to the plaintiff/respondent in the peculiar facts and circumstances of the present case ? It is well settled that a relief under the Specific

Relief Act is purely discretionary and can be refused where the ends of justice do not require the relief to be granted. Mr. Ramamurthi learned counsel for the plaintiff/respondent submitted that the question of discretion would arise only in case where the High Court or this Court is acting in a writ jurisdiction and not in a suit. We are, however, unable to agree with this argument because the exercise of discretion is spelt out from the provisions of the Specific Relief Act and the common law and it applies as much to the writ jurisdiction as to other action at law.

In Jerome Francis v. Municipal Councillors of Kuala Lampur(1), Lord Morris observed as follows:

> "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 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."

Further more under similar circumstances though the dismissal of the employee was by an authority which was not competent to dismiss him, namely, the Municipal Council, their Lordships of the Privy Council refused to grant the declaration in view of the peculiar facts and circumstances of the case which caused hardship. The Privy Council in A. Francis v. Municipal Councillors of Kuala Lampur(1) observed as follows:

> "Accepting, however, the decision of the Court of Appeal, which, as has been pointed out, has not been the subject of any cross-appeal, the position on Oct. 1 was that the removal of the appellant was a removal by the council and not by the president. The council were his employers, but having regard to the provisions of the ordinance their termination of his service constituted wrongful dismissal. Their Lordships consider that it is beyond doubt that on Oct. 1, 1957, there was de facto a dismissal of the appellant by his employers, the respondents. On that date he was excluded from the council's premises. Since then he has not done any work for the council. In all these circumstances it seems to their Lordships that the appellant must be treated as having been wrongly dismissed on Oct. 1, 1957, and that his remedy lies in a claim for damages. It would be wholly unreal to accede to the contention that since Oct. 1, 1957, he had continued to be and that he still continues to be in the employment of the respondents."

As against this position Mr. Ramamurthi counsel for the plaintiff/ respondent submitted that in Hill v. C. A. Parsons & Co. Ltd. (3) a declaration that the termination was invalid was granted by the Court. In that case, however, it was pointed out that the declaration was granted under very special circumstances of that case where the employee was said to be removed from service almost at the fag end of his career after serving for 35 years when he was due to retire only two years later. In that case, however, Lord Denning laid down that in the absence of any special circumstances, a declaration should not be granted. It is clear that in the instant case the respondent had worked in

the College for only two years. In these circumstances, therefore, this case does not appear to be of any assistance to the respondent.

In R. T. Rangachari v. Secretary of State for India in Council(1) the Privy Council observed as follows:

> "But, although their Lordships differ in this important matter from the reasoning and conclusions of the Courts below, they are not on the whole prepared to direct that a declaration on this point should be made. The questions of fact and law are now decided, and a declaration could have no greater effect than the decision itself. After this lapse of time, and having regard to his health, no one suggests that the appellant can now be restored to his office, and the matter of pension and the responsibility of doing right in that regard rests with the Government. Accordingly, their Lordships agree in the view of the Courts below that no order or declaration should be made in this action."

A Division Bench of the Allahabad High Court in Mahant Indra Narain Das v. Mahant Ganga Ram Das & Anr.(2) observed as follows:

> "The second thing to be noted is that the court is given a discretion to make the declaration sought and the plaintiff need not ask for any further relief. The relief being discretionary, no person can claim the declaration as of right."

Similarly in Bhairabendra Narayan Bhup v. State of Assam (3), a Division Bench of the Assam High Court observed as follows:

> "It must be remembered that the declaration claimed under s. 42 lies entirely within the judicial discretion of the Court and is to be exercised with caution according to the exigencies of a particular case. A party cannot, as of right claim such a declaration, because such a relief is more in the nature of an equitable relief than a legal remedy. It has been repeatedly held that a Court should be circumspect as to the declaration it makes, and futile declarations should be always avoided."

Apart from these decisions it would appear that s. 20(1) of the Specific Relief Act clearly codifies this principle and may be extracted as follows:

> "20. (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal."

Similarly s. 34 of the Specific Relief Act also gives a discretion to the Court to give a declaration of the legal character. Section 34 runs thus:

> "Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.
>
> Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee."

It seems to us that neither the First Additional Civil & Sessions Judge nor the High Court, while decreeing the plaintiff's suit, considered this aspect of the matter whether this was a fit case in which the discretion should have been exercised in favour of the respondent. It is manifestly clear from the authorities discussed above that the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the Court according to sound legal principles and ex debito justitiae. The Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these circumstances, while exercising its discretionary powers the Court must keep in mind the well settled principles of justice and fairplay and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum.

The admitted facts in the present case, which will put the Court on its guard, while exercising its discretion to grant a declaration or injunction are as follows:

> (1) That the plaintiff/respondent served the institution for a short period of two years only i.e. from 1964 to 1966 and thereafter he was bereft of all his powers and did not work in the College for a single day.
>
> (2) That if the declaration sought for or the injunction is granted to the plaintiff/respondent the result would be that he would have to be paid his full salary with interest and provident fund for full nine years i.e. from 1966 to 1975, even though he had not worked in the institution for a single day during this period.
>
> (3) That consequent upon the declaration the appellant would have to pay a very huge amount running into a lakh of rupees or perhaps more as a result of which the appellant and the institution would perhaps be completely wiped out and this would undoubtedly work serious injustice to the appellant because it is likely to destroy its very existence.
>
> (4) It is true that the plaintiff/respondent is not at fault, but the stark realities, hard facts and extreme hardship of the case speak for themselves.

(5) It appears that by virtue of the interlocutory orders passed by this Court, the appellant has already deposited Rs.

9,000/- before the High Court which was to be withdrawn by the respondent after giving security, and a further sum of Rs. 9,100/-

being the salary of 13 months has also been deposited by the appellant before the Trial Court under the orders of this Court. It is also stated by counsel for the appellant that the appellant has deposited Rs. 3,000/- more. We feel that in the circumstances the respondent may be permitted to keep these amounts with him and he will not be required to refund the same to the appellant. The amount of deposit in the High Court, if not withdrawn by the respondent may now be withdrawn by him without any security and if he has already withdrawn the amount he will be discharged from the security. This will vindicate the stand of the respondent and compensate him for any hardship that may have been caused to him by the order terminating his services, and will also put a stamp of finality to any further litigation between the parties.

In view of these special and peculiar circumstances of this case, we feel that it will not be a proper exercise of discretion to grant a decree for declaration and injunction in favour of the respondent.

The appeal is accordingly allowed. We set aside the order passed by the High Court and the First Additional Civil & Sessions Judge, dismiss the plaintiff's suit and restore the judgment of the Trial Court. In the circumstances of the case the parties will bear their own costs throughout.

BHAGWATI, J. I agree with the final order proposed by my learned brother Fazal Ali, J., but I would like to state my own reasons for reaching that conclusion. The facts giving rise to the appeal have been fully set out in the judgment of my learned brother and it would be a futile exercise to restate them. I will straight away proceed to consider the question of law which arises for determination in the appeal. The question is, whether the termination of the service of the first respondent by the appellant was in violation of Statute 30 of the Statutes of the Agra University which applied to the appellant at the material time, and in any event, the termination was ineffective and inoperative as it was not approved by the Vice-Chancellor as required by s. 28, sub-s. (3) of the Kanpur and Meerut Universities Act, 1956, and in either case, whether the first respondent was entitled to a declaration that the termination was null and void so as to warrant a declaration that he continued in the service of the appellant, or, his claim merely lay in damages. It is a question of some importance.

I will first take up the first part of the question. On this part, there was no dispute between the parties that the requirements of Statute 30 were not complied with by the appellant in terminating the service of the first respondent. The controversy merely centered round the question whether the termination of service in breach of the requirements of Statute 30 rendered the termination null and void so as to entitle the first respondent to a declaration that he continues in service or it amounted merely to a breach of contract giving rise to a claim for damages. Let me first examine this question on principle before turning to the decided cases. There are two distinct classes of cases which might arise when we are considering the relationship between employer and employee. The relationship may be governed by contract or it may be governed by statute or statutory regulations. When it is

governed by contract, the question arises whether the general principles of the Law of Contract are applicable to the contract of employment or the law governing the contract of employment is a separate and sui generis body of rules. The crucial question then is as to what is the effect of repudiation of the contract of employment by the employer. If an employer repudiates the contract of employment by dismissing his employee, can the employee refuse to accept the dismissal as terminating the contract and seek to treat the contract as still subsisting ? The answer to this question given by general contract principles would seem to be that the repudiation is of no effect unless accepted, in other words, the contracting party faced with a wrongful repudiation may opt to refuse to accept the repudiation and may hold the repudiator to a continuance of his contractual obligation. But does this rule apply to wrongful repudiation of the contract of employment ? The trend of the decisions seems to be that it does not. It seems to be generally recognized that wrongful repudiation of the contract of employment by the employer effectively terminates the employment: the termination being wrongful, entitles the employee to claim damages, but the employee cannot refuse to accept the repudiation and seek to treat the contract of employment as continuing. What is the principle behind this departure from the general rule of law of contract ? The reason seems to be that a contract of employment is not ordinarily one which is specifically enforced. If it cannot be specifically enforced, it would be futile to contend that the unaccepted repudiation is of no effect and the contract continues to subsist between the parties. The law in such a case, therefore, adopts a more realistic posture and holds that the repudiation effectively terminates the contract and the employee can only claim damages for wrongful breach of the contract. Now a contract of employment is not specifically enforced because ordinarily it is a contract of personal service and, as pointed out in the first illustration to clause (b) of s. 21 of the Specific Relief Act, 1877, a contract of personal service cannot be specifically enforced. Of course this illustration has now been omitted in the new Specific Relief Act, 1963 and what would be the effect of such omission may be a point which may require consideration some day by this Court. But for the purpose of this case, I will proceed on the assumption that even under the new Act, the law is the same and it frowns on specific enforcement of a contract of personal service. Now what is the rationale behind this principle ? That is found stated in the locus classicus of Fry, L.J., in De Francesco v. Barnum(1):

> "For my own part, I should be very unwilling to extend decisions the effect of which is to compel persons who are not desirous of maintaining continuous personal relations with one another to continue those personal relations. I have a strong impression and a strong feeling that it is not in the interest of making that the rule of specific performance should be extended to such cases. I think the Courts are bound to be jealous, lest they should turn contracts of service into contracts of slavery; and therefore, speaking for myself, I should lean against the extension of the doctrine of specific performance and injunction in such a manner."

This rationale obviously can have application only where the contract of employment is a contract of personal service involving personal relations. It can have little relevance to conditions of employment in modern large-scale industry and enterprise or statutory bodies or public authorities where there is professional management of impersonal nature. It is difficult to regard the contract of employment in such cases as a contract of personal service save in exceptional cases. There is no reason why specific performance should be refused in cases of this kind where the contract of

employment does not involve relationship of personal character. It must be noted that all these doctrines of contract of service as personal, non-assignable, unenforceable, and so on, grew up in an age when the contract of service was still frequently a "personal relation" between the owner of a small workshop or trade or business and his servant. The conditions have now vastly changed and these doctrines have to be adjusted and reformulated in order to suit needs of a changing society. We cannot doggedly hold fast to these doctrines which correspond to the social realities of an earlier generation far removed from ours. We must rid the law of these anachronistic doctrines and bring it in accord "with the felt necessities of the times". It is interesting to note that in Fry's classic work on Specific Performance, contracts of service appear in a small group under the sub- heading "Where enforced performance would be worse than non- performance". We may ask ourselves the question: for whom it would be worse and for whom it would be better. Where, in a country like ours, large numbers of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service may have to remain without means of subsistence for a long period of time. Damages equivalent to one or two months wages would be poor consolation to him. They would be wholly insufficient to sustain him during the period of unemployment following upon his discharge. The provision for damages for wrongful termination of service was adequate at a time when an employee could without difficulty find other employment within the period of reasonable notice for which damages were given to him. But in conditions prevailing in our country, damages are a poor substitute for reinstatement: they fall far short of the redress which the situation requires. To deny reinstatement to an employee by refusing specific performance in such a case would be to throw him to the mercy of the employer: it would enshrine the power of wealth by recognising the right of the employer to fire an employee by paying him damages which the employer can afford to throw away but which would be no recompense to the employee. It is, therefore, necessary and I venture to suggest, quite possible, within the limits of the doctrine that a contract of personal service cannot be specifically enforced, to take the view that in case of employment under a statutory body or public authority, where there is ordinarily no element of personal relationship, the employee may refuse to accept the repudiation of the contract of employment by the statutory body or public authority and seek reinstatement on the basis that the repudiation is ineffective and the contract is continuing. That is in effect what happened in the case of McClalland v. Northern lreland General Health Service Board(1). The plaintiff's contract in this case was really one of master and servant, the only special condition being that her post had been advertised as "permanent and pensionable" and it provided specific reasons, such as gross misconduct and inefficiency, for which she might be dismissed. The defendant Board introduced a rule after her appointment that women employees must resign on marriage and since the plaintiff got married, the respondents terminated her service by giving what they thought was a reasonable notice. The plaintiff contended that the defendant Board was not entitled to terminate her service and claimed a declaration that the purported termination was null and void and she continued in service. The House of Lords held that the contract was exhaustive as regards the reasons for which the defendant-Board could terminate the service of the plaintiff and since none of those reasons admittedly existed, the termination of service of the petitioner by the defendant-Board was nullity and the plaintiff continued in service of the defendant-Board. This was a case of a pure contract of master and servant and yet the House of Lords held that the termination of employment of the plaintiff by the defendant-Board which was not accepted by the plaintiff was ineffective and the plaintiff was entitled to a declaration that she continued in service. It should thus be possible to hold that even if a statutory body or public

authority terminates the service of an employee in breach of a contractual obligation, the employee could disregard the termination as ineffective and claim a declaration that his service is continuing. But this would be a somewhat novel and unorthodox ground which has not been recognised by any decision of this Court so far and moreover I do not think that, on facts, this is a proper case in which it would really be applicable and hence I do not propose to finally pronounce upon it.

The second category of cases are those where the relationship between the employer and the employee is governed by statute or sub-ordinate legislation, and where such is the case, the termination, which is the same thing as repudiation, may, in a given situation, be null and void and in that event, it would not have the effect of putting an end to the contract and the employee would be entitled to a declaration that his service is continuing. The doctrine that a contract of personal service cannot be specifically enforced would not stand in the way of the employee, because the termination being null and void, there being no repudiation at all in the eye of the law, there would be no question of enforcing specific performance of the contract of employment. What the employee would be claiming in such a case is not enforcement of a contract of personal service but declaration of statutory invalidity of an act done by the employer. The case would be of a kind similar to that decided by the Judicial Committee of the Privy Council in High Commissioner for India v. I. M. Lail(1) the essential feature of which was aptly and succinctly described by this Court in Dr. S. B. Dutt v. University of Delhi(2) in these words:

> "That was not a case based on a contract of personal service... The declaration did not enforce a contract of personal service but proceeded on the basis that the dismissal could only be effected 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 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."

Where, for example, the termination is outside the powers of a statutory body either because the statutory body has no power to terminate the employment or because the termination is effected in breach of a mandatory obligation imposed by law which prescribes that the termination shall be effected only in a particular manner and no other, it would be a nullity and the employee would be entitled to ignore it and ask for being treated as still in service. such was the case in Life Insurance Corporation of India v. Sunil Kumar Mukherjee(3) where an order of termination of service of certain employee by the Life Insurance Corporation in breach of clauses 10(a) and 10(b) of an order passed by the Central Government under s. 11(g) of the Life Insurance Corporation Act, 1956, was held to be null and void on the ground that it was not effected in terms of clauses 10(a) and 10(b) of the Statutory Order. So also in Mafatlal Barot v. Divisional Controller, State Transport, Mahsana(4), this Court held that an order of termination of service passed against the petitioner in contravention of clause 4(b) of Schedule 'A' to the Regulations made by the State Road Transport Corporation in exercise of powers conferred under s. 45 of the Road Transport Corporations Act, 1950 was bad in law and it was quashed by issuing a writ of certiorari. This principle was also approved by this Court in B. N. Tewari v. District Board, Agra(1) though it was held there, on facts that the dismissal of the employee was proper and justified. Shah, J., speaking on behalf of this Court in that case recognised

this principle and treated it as a third exception to the general rule in the following words:

> "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-recognised 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 Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ 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 recognised. 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."

This position in law was reiterated by this Court in U.P. State Warehousing Corporation v. C. K. Tyagi(2) where, after referring to Dr. Dutt's case and S. R. Tewari's case, Vaidialingam, J., observed:

> "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-recognised 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 or Labour or Industrial Tribunals. (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute."

This statement of law was reaffirmed again by this Court in Indian Airlines Corporation v. Sukhdeo Rai (3) and Bank of Baroda v. Jewan Lal Mehrotra(4).

Now, two questions immediately arise for consideration on this statement of law. The first is, what is the 'statutory body' contemplated in these decisions, and the second is, are the three exceptions formulated by this Court intended to be exhaustive ? When we are trying to understand what is the 'statutory body' which this Court had in mind when it laid down this statement of law, it must be remembered that a statement of law enunciated by this Court must be read in the light of the principle which it seeks to effectuate and it should not be construed as if it were a section. The third exception is intended to cover cases where by reason of breach of mandatory obligation imposed by law, as distinct from contract, the termination of service is null and void so that there is in law no repudiation at all. That is the principle on which the third exception is based and it is in the light of this principle that the expression 'statutory body' used by this Court has to be understood. Now, obviously, a body or authority created by statute would be a statutory body, but even a body or authority which is created under a statute, as for example, the State Road Transport Corporation which is created by the State under the Road Transport Corporation Act, 1950, would also be a statutory body. What other kinds of statutory bodies would be included is a matter not free from difficulty. But in any event it does appear to me that the three exceptions formulated in the

statement of law laid down by this Court in the above decisions are not intended to be and cannot be exhaustive. The categories of exceptions to the general rule should not be closed, because any attempt at rigid and exhaustive formulation of legal rules- any attempt to put law in a strait jacket formula-is bound to stifle the growth of law and seriously cripple its capacity to adapt itself to the changing needs of society. In fact, Ray, J., as he then was, speaking on behalf of this Court in Sirsi Municipality v. Kom Francis(1) pointed out that the third exception applied not only to employees in the service of "bodies created under statutes", but also to those in the employment of "other public or local authorities". It may be a possible view-and some day this Court may have to consider it-that where law, as distinct from contract, imposes a mandatory obligation prescribing the kind of contract which may be entered into by an employer and the manner in which alone the service of an employee may be terminated, any termination of service effected in breach of such statutory obligation would be invalid and ineffective and in such a case the court may treat it as null and void. But I do not think it necessary to pursue this line of discussion any further and come to a positive conclusion whether the appellant is or is not a statutory body or a public authority nor do I consider it necessary to go into the question whether the Statutes of the Agra University had the force of law and conferred rights on the Principal and teachers of affiliated colleges, as in Prabhakar Ramakrishna Jodh v. A. L. Pande & Anr.(2), or they only set out the terms and conditions which had no validity and conferred no legal rights, unless and until they were embodied in the contract between the principal or teacher on the one hand and the affiliated college on the other as in Vidya Ram Mishra v. Managing Committee, Shri Jai Narain Conege(3). I take the view that on the second part of the question the case of the first respondent is well founded.

It was common ground between the parties that at the material time the Statute which was applicable to the appellant was the Kanpur and Meerut Universities Act, 1965. Section 28, sub-s. (3) of this Act declares that every decision by the management of an affiliated college to dismiss or remove from service a teacher shall be reported forthwith to the Vice-Chancellor and subject to the provisions contained in the Statutes shall not take effect unless it has been approved by the Vice-Chancellor. The language of this section is absolute and peremptory and leaves no doubt as to its meaning and effect. It provides in terms clear and unambiguous that the termination of service of a teacher by the management shall not take effect, that is, it shall be ineffective and inoperative unless the Vice-Chancellor on being informed has approved of it. When this section, which is a law made by the Legislatures, has enacted that the termination of service shall be ineffective or, in other words, it shall have no validity or force unless it has been approved by the Vice-Chancellor, it is difficult to see how it can be regarded as effectively terminating the service. To take such a view would be to refuse to give effect to the law enacted by the Legislature. The law enacted in this section operates, irrespective whether the management is or is not a statutory body. Such a consideration is entirely irrelevant to the applicability of this section. When the section says that the termination of service shall not have any effect, the Court must refuse to recognise the termination as valid and effective, and when the Court does so, it merely enforces the law and there is no question of transgressing the principle that a contract of personal service cannot be enforced. There can, therefore, be no doubt that the termination of service of the first respondent by the appellant was ineffective and void and it did not operate to put an end to the employment, even wrongful, by reason of s. 28, sub-s. (3) of the Kanpur and Meerut Universities Act, 1965.

The first respondent, on this view, would ordinarily be entitled to the declaration and injunction prayed for by him, but the relief of declaration and injunction being discretionary, I agree with the view taken in the judgment of my learned brother Fazal Ali, J., that having regard to the peculiar facts and circumstances of the present case as set out in his judgment, this is not a proper case where such relief of declaration or injunction should be granted to the first respondent: instead, the aggregate amount of Rs. 21,100/- deposited by the appellant in the Court would be fair and just compensation to the first respondent. However, I must hasten to make it clear that ordinarily an employee whose termination of service is found to be null and void or ineffective by reason of a statutory provision, and that would include subordinate legislation which has the force of law, should be awarded a declaration that he continues in service and it should be no ground for refusing him such declaration that before his purported termination of service, he was in employment only for a short period. That would be denying him security of tenure which the law seeks to give him in clear and unambiguous terms. But, in the present case, the circumstance which weighs most with me in refusing to exercise my discretion in favour of the first respondent is that if the relief of declaration and injunction is granted to the first respondent, it will involve the appellant in a financial liability of over Rs. One lakh and that would wipe out the educational institution of the appellant or in any event seriously cripple it and that, in its turn, would prejudicially affect the interests of the student community which is an important consideration which the Court cannot fail to take into account while determining what are the broad considerations of social justice which must guide its exercise of discretion.

I accordingly agree with the final order proposed by my learned brother.

V.P.S. Appeal allowed.