Supreme Court of India
Indian Airlines Corporation vs Sukhdeo Rai on 27 April, 1971
Equivalent citations: 1971 AIR 1828, 1971 SCR 510
Author: Shelat
Bench: Shelat, J.M.

PETITIONER:
INDIAN AIRLINES CORPORATION

Vs.

RESPONDENT:
SUKHDEO RAI

DATE OF JUDGMENT27/04/1971

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
DUA, I.D.
BHARGAVA, VISHISHTHA

CITATION:
1971 AIR 1828 1971 SCR 510
1971 SCC (2) 192

ACT:
Air Corporation Act, 1953-Sections 44, 45-Regulation framed under the Act providing terms and conditions of service of employees--Termination of service in breach of regulations-Relationship between Corporation and its employees that of master and servant--Therefore, only entitled to damages.
Regulations-Framed under Air Corporation Act, 1953-Status of.
Master and Servant-Employees of statutory corporation-Regulations framed under statute only embody terms and conditions of service.

HEADNOTE:
The appellant is a Corporation set up under the Air Corporation Act, 1953. The Act authorises the corporation to appoint officers and, other employees and make regulations providing the terms and conditions of service of such officers and employees.
The respondent employed as a motor driver was dismissed from the service of the Corporation in breach of the procedural safeguards provided under the regulations. He filed a suit for a declaration that the dismissal was illegal and void. The trial court granted the declaration. On appeal the High

Court affirmed the decree holding that the Corporation was under a statutory obligation to observe the procedure laid down in the regulations and that not having been done the order of dismissal was illegal and void and the respondent continued to be in the employment of the Corporation as if there was no termination of service. On the question whether the declaration given by the trial court and upheld by the High Court could be granted,

HELD: (1) 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. [512H]

Francis v. Municipal Councillors of Kuala Lumpur, [1962] 3 All E.R. 633, Barber v. Manchester Regional Hospital Board, [1958] 1 All E.R. 322 and Ridge v. Baldwin, [1964] A.C. 40, referred to.

But the court would grant a declaration of nullity where the action complained of is ultra vires or where the appointment is to an office or status. [513E-F]

Vine v. National Dock Labour Board, [1957] A.C. 488, Bool Chand v. The Chancellor, [1968] 1 S.C.R. 434 and Vidyodaya University v. Silva, [1964] 3 All E.R. 865, referred to.

511

(ii) The fact that the appellant Corporation was one set up under and was regulated by a statute would not take away, without anything more, the relationship between the Corporation and its employees from the category of purely master and servant relationship. [514E]

Vidyodaya University v. Silva, [1964] All E.R. 865 and Dr. S. B. Dutt v. University of Delhi, [1959] S.C.R. 1236, referred to.

(iii)The employment of the respondent is not one to an office or status and neither the Act nor the rules made under s. 44 by the Central Government lay down any obligation or restriction as to the power of the Corporation to terminate the employment of its employees or any procedural safeguards subject to which only such power could be exercised. [516E]

(iv) This Court has held that there are only three well-recognised exceptions to the general rule under the law of master and servant where a declaration would be issued, viz., (i) cases of public servants falling under article 311(2) of the Constitution; (ii) cases falling under the industrial law and (iii) cases where acts of statutory bodies are in breach of a mandatory obligation imposed by a

statute. [517B]
S. R. Tewari v. District Board, Agra, [1964] 3 S.C.R. 55, Bank of Baroda v. Mehrotra, [1970] 2 L.L.J. 54, Ram Babu Rathaur v. Life insurance Corporation, A.I.R. 1961 All. 502, Life Insurance Corporation v. N. Banerjee, (1971] 1 L.L.J. 1, Dr. Gupta v. Nathu , [1963] 1 S.C.R. 721, Kruse v. Johnson, [1898] 2 Q.B.D. 91 and Rajasthan State Electricity Board v. Mohan Lal, [1967] 3 S.C.R. 377, referred to.
Life Insurance Corporation of India v. Mukherjee, [1964] 5 S.C.R. 528, distinguished.
Barot v. S. T. Corporation, [1966] 3 S.C.R. 40, explained.
(V) Though made under the power conferred by statute, the regulations merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them. That being so, and the Corporation having undoubtedly power to dismiss its employees, the dismissal of the respondent was with jurisdiction and although it was wrongful in the sense of its being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent, it did subsist. [520D]
(vi) The present case, therefore, did not fall under any of the three well-recognised exceptions laid down by this Court; hence the respondent was only entitled to damages and not to the declaration that his dismissal was null and void. [520E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 1171 of 1967. Appeal from the judgment and decree dated September 27, 1966 of the Calcutta High Court in Appeal from Appellate Decree No. 195 of 1964.

G. B. Pai, O. C. Mathur, J. B. Dadachanji, C. S. Sreenivasa Rao and Bhajan Ram Rakhini, for the appellant. Urmila Kapoor, Janardan Sharma and R. K. Khanna, for respondent.

The Judgment of the Court was delivered by shelat J.-Prior to August 1953, the respondent was employed as a motor driver in Airways (India) Ltd. On the passing of the Air Corporation Act, XXVII of 1953, and consequent thereupon of the taking over of the existing air companies, including the Airways (India) Ltd., by the appellant- Corporation, he became the employee of the appellant-Corporation. On January 13, 1956, he was suspended on certain charges. On being found guilty of those charges after an enquiry had been held, he was dismissed by an order dated February 6, 1956.

The respondent filed a suit alleging that the enquiry had been conducted in breach of the procedure laid down by the Regulations made by the Corporation under sec. 45 of the Act, and that therefore, the dismissal was illegal and void. The Trial Court accepted the contention and granted a declaration

that his service continued as the order dismissing him was null and void. That decree was upheld by the first appellate court. In a second appeal in the High Court, it was conceded that the Regulations applied to the respondent's case, and that the procedure therein laid down for terminating his service was not complied with. The Corporation's contention, however, was that the only relief to which the respondent was entitled to was damages and that a declaration, such as the one granted by the Trial Court, could not be given. The High Court rejected that contention holding, that the Corporation was under a statutory obligation to observe the procedure laid down in the Regulations, and that not having been done, the order of dismissal was illegal and void and the respondent continued to be in the employment of the Corporation as if there was no termination of service. This appeal, founded on a certificate granted by the High Court, is directed against its aforesaid judgement and decree.

It being an admitted fact that the respondent's service was terminated in breach of the procedural safeguards provided in the Regulations, the question for determination is whether in cases, such as the one before us, a declaration given by the Trial Court and upheld by the High Court could be granted.

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. (see A. Francis v. Municipal Councillors of Kuala Lumpur and Barber v. Manchester Regional Hospital Board (2).

"Cases of dismissal fall into three classes", said Lord Roid in Ridge v. Baldwin. (3) firstly, dismissal of a servant by his master, secondly, dismissal from office held during pleasure, and thirdly, dismissal from office where there must be something against a man to warrant his dismissal. It is in the third category of cases that an employee cannot be dismissed without first letting him know what is alleged against him and hearing his defence or explanation. He added that in a case of purely master and servant relationship, the servant is not entitled to say that he was not heard by his master before his dismissal. Such a ques- tion of being heard or not can only arise where the authority employing the servant is under some statutory or other restriction as to the kind of contract which it can make with its servants or the grounds on which it can dismiss them. Ile question, therefore, would be whether the relationship between the Corporation and the respondent was any thing else than that of master and servant, or whether the Corporation was under some statutory limitation or obligation by reason of which it could not terminate his service except by complying with such an obligation. The decision in Vine v. National Dock Labour Board (4) illustrates a case where the court would grant a declaration of nullity. That was a case of lack of power in the Board to delegate its disciplinary function to a committee which dismissed the employee-an action which was held ultra vires, and therefore, a nullity. A similar consequence also follows where the appointment is to an office or status, such as the vice-chancellorship of a

university, as was the case in Bool Chand v. The Chancellor (5), where this Court held that the tenure of office held by the appellant could not be terminated without informing him of the allegations made against him and without hearing him or giving him an opportunity to give an explanation.

There is, on the other hand, the case of Vidyodava Univer- sity v. Silva (6) where a teacher appointed by the University was found not to be holding such an office or status and where it was held that the University, though established under a statute, was under no statutory obligation or restriction, subject to which only it could terminate the service of the teacher. The service (1) [196213 All E.R. 633.

(3) [1964] A.C. 40 at 65.

(5) [1968]1 S.C.R. 434.

33-1S.C.India 71 (2) [1958] 1 All E.R. 322.

(4) [1957] A.C. 488.

(6) [1964] 3 All E.R. 865.

of the respondent was brought to an end by a resolution of the University Council set up under the statute establishing the University. The resolution was admittedly passed without hearing the teacher. Under the statute, the Council was empowered to institute professorships and every appointment was to be by an agreement in writing between the University and the professor and was to be for such period and on such terms as the Council might resolve. Under sec. 18(e) of the Act, the Council had the power to dismiss an officer or a teacher on grounds of incapacity or conduct which in the opinion of not less Than two-thirds of the members of the Council rendered him unfit to be an officer or a teacher of the University. Such a resolution with the requisite majority was passed. The Act gave no right to the teacher of being heard by the Council. The Privy Council held that the mere circumstance that the University was established by the statute and was regulated by statutory enactments contained in the Act did not mean that the contracts of employment made with teachers, though subject to sec. 18(e), were other than ordinary contracts of master and servant, and therefore, the procedure of being heard invoked by the respondent was not available to him and no writ could be issued against the University. (see also Dr. S. B. Dutta. v. University of Delhi (1) 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 relationship between it and its employees from the category of purely master and servant relationship. Are there then in the Act any provisions which impose upon the Corporation any statutory restriction or obligation which limits its power of terminating that relationship ? The Act was passed to facilitate acquisition by the Air Cor- porations of undertakings belonging to certain existing air companies and to make further and better provisions for the operation of air transport services. By sec. 3, two corporations, the Indian Airlines and Air India International, were set up as bodies corporate, having perpetual succession. Sec. 8(1) provides that for purposes of discharging its functions under the Act each of the

corporations shall appoint a general manager and subject to such rules as may be prescribed in this behalf may also appoint such number of officers and employees as it may think necessary. Its second sub-section provides that:

> "Subject to the provisions of section 20, every person employed by each of the Corporations shall be subject to such conditions of service and shall be entitled to such remuneration and privileges as may be determined (1) [1959] S.C.R. 1236, at 1244.
>
> by regulations made by the Corporation by which he is employed."
>
> Sec. 20 provides that:
>
> "Every officer or other employee of an existing air company-employed by that company prior to the first day of July, 1952, and still in its employment immediately before the appointed date shall-become as from the appointed date an officer or other employee, as the case may be, of the Corporation in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pensions and gratuity and other matters as he would have held the same under the existing air company if its undertaking had not vested in the Corporation and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms or conditions are duly altered by the Corporation."

Sec. 44(1) empowers the Central Government to make rules to give effect to the provisions of the Act and sub-s. (2) thereof empowers it, in particular and without prejudice to the generality of that power, to make rules, inter alia, providing the terms and conditions of service of the general manager and such other categories of officers as may be specified from time to time under s. 8(1). Sec. 45 authorises each of the two Corporations with the approval of the Central Government and by notification in the Government gazette to make regulations not inconsistent with the Act or the rules made under s. 44 "for the administration of the affairs of the Corporation and for carrying out its functions" and in particular providing the terms and conditions of service of officers and other employees of the Corporation other than the general manager and officers of any other categories referred to in s. 44.

The effect of these provisions, briefly, is, (1) that sec. 8(1) authorises the Corporation to appoint officers and other employees, (2) that under s. 8(2) the Corporation is empowered, subject to s. 20, to lay down the terms and conditions of service of such officers and employees as it may determine by regulations made under s. 45, and (3) that by virtue of s. 20 the officers and employees of the existing air companies, whose undertakings were taken over by the Corporations, became, by whom the operation of the Act, the employees of the Corporation in On a Particular undertaking was vested. The section ensures that on their so becoming the employees of the Corporation they would be governed by the same terms and conditions of service by which they were governed immediately

before the appointed date until the Corporation altered those terms and conditions by regulations The power to appoint its employees. except to the extent of the employees of the existing air companies becoming by operation of s. 20 its employees, is vested in each of the two Corporations Each of them has also the power to lay down the terms and conditions of service of its employees by regulations and thereby even alter the terms and conditions, which those who became by operation of law its employees had in their respective existing companies, and which, until such alteration, were ensured to them. Indeed, the power of the Corporation to terminate the employment of its officers and other employees was no where disputed; the only dispute raised was as to the manner in which it could be exercised. It is necessary to observe in this connection that neither the Act nor the rules made under sec. 44 by the Central Government lay down any obligation or restriction as to the power of the Corporation to terminate the employment of its employees or any procedural safeguards, subject to which only, such power could be exercised. The reason is that under the scheme of the Act such procedural safeguards and other terms and conditions of service were to be provided for in the regulations made by the Corporation under sec. 45. The employment of the respondent not being one to an office or status and there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the respondent's employment could be exercised, could the respondent contend that he was entitled to a, declaration that the termination of his employment was null and void ?

A case of an analogous nature arose in U. P. State Ware- housing Corporation Ltd. v. Tyagi. (1) The Agricultural Produce (Development and Warehousing) Corporation Act, XXVIII of 1956, with which the Court there was concerned, provided for the incorporation and regulation of corporations for development and warehousing of agricultural produce on cooperative principles. See. 28 empowered State Governments to set up such corporations. Sec. 52 authorised the appropriate Government to make rules and ss. 53 and 54 gave power to the Board set up under the Act and the corporations respectively to make regulations consistently with the provisions of the Act and the rules The respondent there was dismissed from service without following the procedure laid down in regulation 16(3). There was no (1) [1970] 2 S.C.R. 250.

question or doubt about the power of the Corporation to terminate his service. The question was, whether a declaration to the effect that the termination was invalid and void on the ground of non-compliance of regulation 16(3), could be granted in the suit filed by the respondent. This Court, after examining a number of decisions, followed the decision in S. R. Tewari v. District Board Agra (1) which laid down that there were only three well recognized exceptions to the general rule under the law of master and servant where such a declaration would be issued, namely, (1) cases of public servants falling under Art. 311(2) of the Constitution, (2) cases falling under the industrial law, and (3) cases where acts of statutory bodies are in breach of a mandatory obligation imposed by a statute, and held that the case before it did not fall under any one of the said three exceptions, that the dismissal was wrongful inasmuch as it was in breach of the terms and conditions of employment embodied in the regulations and not one of breach of a statutory restriction or obligation, subject to which only the power to terminate the relationship depended. (see also Bank of Baroda v. Mehrotra (2) In S. R. Tewari's case (1) this Court noticed with approval the decision of the High Court of Allahabad in Ram Babu Rathaur v. Life Insurance Corporation (3) that though the Corporation was a statutory body, the relations between it and its employees were governed by contract and were of

master and servant and not subject to any statutory obligation although the Corporation had framed under its power under the Act regu- lations containing conditions of service in the Corporation. A similar view has recently been taken by the High Court of Calcutta in Life Insurance Corporation v. N. Banerjee (4). Counsel for the respondent, however, sought assistance from the decision in the Life Insurance Corporation of India v. Mukherjee (5). That decision is clearly distinguishable and can, therefore, give no assistance. Prior to the passing of the Life Insurance Corporation Act, 1956 the respondent there was an employee of one of the insurance companies taken over under the Act. Under his contract of employment, his service was liable to be terminated without notice if he was found guilty of fraud, misappropriation etc. but was entitled to 30 days' notice if it was terminated for any other reason. His service was terminated admittedly without giving him an opportunity to be heard. With the transfer of the controlled business from the insurer to the Corporation, the employees of the former became the employees of the latter and (1) [1964] 3 S.C.R. 55. (2) [1970] II L.L.J. 54. (3) A.I.R. 1961 All. 502. (4) [1971] 1 L.L.J. 1. (5) [1964] 5 S.C.R. 528.

were governed under S. 11 (1) of the Act by the same terms and conditions as before. But under sec. 11 (2), the Central Government had the power to alter those terms and conditions. Under this power, the Government issued an order reducing the remuneration payable to the development officers and revising their other terms and conditions. Cl. (10) of this order empowered the Corporation inter alia to terminate the services of such an officer, (a) after giving him an opportunity of showing cause, or (b) without assigning any reason but with the prior approval of the Chairman of the Corporation and after giving three months' notice. Cl. (11) of the order provided that the actual pay admissible to an officer would be determined in accordance with the regulations which the corporation would make under the power reserved to it by the Act. It is thus clear that, except for the pay and allowances admissible to an officer, the Order was a self-contained code as regards the other terms and conditions of service including disciplinary action. In the meantime, two circulars had been issued by the managing director which provided that in certain circumstances the services of an officer could be termina- ted. As contemplated by cl. (II) of the said Order, the Corporation framed regulations under sec. 49 of the Act. Regulation 4(3) incorporated the said circulars as part of the regulations for purposes of determining the pay admissible to and the fitment of the development officers. Thus, the circulars became part of the regulations though when they were issued they were merely administrative in character and without any sanction of the Act. The Corporation claimed that under regulation 4(3), which in- corporated the said circulars, it had the power to terminate the service of Mukherjee without assigning any reason. Negativing that contention, this Court held that s. 11(2) was paramount and would override any provision of the Order passed by the Central Government if it was contrary to it. Next would come the Order, and lastly the regulations which were subject to the Act and the Order, and therefore, if the regulations were to be inconsistent with the provisions of S. 11(2) or the said Order, the regulations would be to that extent invalid. Therefore, even if the regulations provided for termination of services they would have to be read subject to the Order of the Government, and consequently, the order terminating the service of an officer would have to be in consonance with the provisions of the said Order. Consequently, an order terminating the service of an officer without giving him an opportunity of being heard, as provided by cl. (10) of the said Order, would be without power, and therefore, invalid. The Court held the impugned dismissal as invalid also for the reason that regulation 4(3) provided for determination of pay and allowances and the fitment of officers in

accordance with the principle laid down in the said circulars, and therefore, the service of an officer could not be determined under the guise of fitment. That could, therefore, be done only under cl. (10) of the Order and in accordance with the procedure laid down in that clause. The order declaring the dismissal invalid thus was based on the ground that the regulations and the Order of the Central Government must be read harmoniously and when so read, the Central Government's Order gave power to terminate the service of an officer after following the procedure there laid down, and consequently, the impugned dismissal made inconsistently with the provisions of the said Order was without jurisdiction, and therefore, a nullity. It is clear that this decision was based on different facts and on different principles and cannot be legitimately invoked by the respondent. But the decision in Barrot v. S. T. Corporation (1) would seem to support the respondent. There, the order of termination of the appellant's service by the Corporation, a body set up under the Road Transport Corporations Act, 1950, was held to be bad in law on account of its being in contravention of cl. 4(b) of the Regulations containing service conditions framed by the Corporation under the power given to it by the Act. But the question whether the said Regulations constituted a statutory obligation subject to which only the power to terminate the employment could be exercised or not, or the question whether they took the employment out of master and servant relationship was not canvassed. Neither the decision in S. R. Tewari's case (2) nor any other similar decision was also it seems, brought to the notice of the Court.

Nor can counsel derive any aid, from the decision in Dr. Gupta v. Nathu (3) where the Court was dealing with a by-law made by the Central Government under powers conferred on it by the Forward Contracts (Regulation) Act, 1952 which compulsorily amended the bye-laws of the association recognized under the Act and which vested certain powers on authorities external to the association. The bye-law in question was not limited in its application to the members of the association but to all those who entered into forward contracts and were governed by its by-laws. But all rules and regulations made by authorities ill pursuance of a power under a statute do not necessarily have the force of law. In Kruse v. Johnson. (4) while considering the validity of a bye-law made by a country council. Lord Russell described a bye-law having the force of law as one affecting the public or some section of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. It validly made such a bye- law has the force of law within the sphere of its (1) [1966] 3 S.C.R. 40.

(3) [1963] 1 S.C.R. 721.

(2) [1964] 3 S. C. R. 55.

(4) [1898] 2 Q.B. 91, at 96.

legitimate operation. The function of such bye-laws is to supplement the general law by which the legislature delegates its own power to make them. In Rajasthan State Electricity Board v. Mohan Lal (1) where this Court held the Board, set up under the Electricity (Supply) Act, 54 of 1948, as a State within the meaning of Art. 12 of the Constitution against which mandamus could issue under Art. 226, emphasised the fact that the Act contained provisions which empowered the Board to issue

directions, the disobedience of which was punishable as a penal offence. As observed earlier, under sections 8(2) and 20, the appellant- Corporation has been given the power to employ its own officers and other employees to the extent it thinks necessary on terms and conditions provided by it in regu- lations made under sec. 45. The regulations contain the terms and conditions which govern the relationship between the Corporation and its employees. Though made under the power conferred by the statute, they merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them. That being so, and the Corporation having undoubtedly the power to dismiss its employees, the dismissal of the respondent was with jurisdiction, and although it was wrongful in the sense of its being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent, it did subsist. The present case, therefore, did not fall under an of the three well recognized excep- tions, and therefore, the respondent was only entitled to damages and not to the declaration that his dismissal was null and void.

In our view, the High Court was in error in upholding the declaration granted by the Trial Court. The appeal by the Corporation, therefore, succeeds and is allowed with the result that the judgment and decree passed by the High Court is set aside. In the circumstances of the case, however, there will be no order as to costs.

K. B. N.

Appeal allowed.

(1) [1967] 3 S.C.R. 377.