(1985) 01 CAL CK 0015

Calcutta High Court

Case No: None

Hindustan Steel Ltd.	APPELLANT
Vs	
R.N. Banerjee	RESPONDENT

Date of Decision: Jan. 1, 1985

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 15, 16, 298

Citation: (1985) 1 LLJ 214

Hon'ble Judges: S.K. Mookerjee, J; B.C. Ray, J

Bench: Division Bench

Judgement

B.C. Ray, J.

This appeal is directed against the judgment and decree dated 10th October 1977 passed in Title Suit No. 40 of 1971 whereby the said suit was decreed and it was declared that the order of removal of the plaintiff by notice dated 11th September, 1969 was wrong, illegal, void and without jurisdiction and the plaintiff is continuing in service as Divisional Engineer under the defendant Company. The facts of the case as appeared from the plaint in brief are as follows:

The plaintiff, Rabindra Nath Banerjee was appointed as an Assistant Engineer under the defendant Hindustan Steel Ltd. in its Durgapur Steel Plant Unit in the scale of pay of Rs. 275/- 800/- plus usual allowance in April, 1957. Prior to this appointment the plaintiff worked under Braitwaite Burn and Jessop Construction Company Limited and M/s. Mekezies Limited for about 10 years as an Assistant Engineer on an approximate remuneration of Rs. 400/- per month with usual D.A. with effect from 12th of November, 1962 and he was working in the same capacity till the middle of November, 1967. On or about 3rd June, 1967 the plaintiff received a letter No. VIZ/Durgapur/1564/539 from the Assistant Vigilance Officer, Durgapur Steel Plant whereby the plaintiff was asked to furnish a statement of his assets. The plaintiff accordingly submitted his statement of assets on June 30, 1967 and also returned the said letter as directed.

2. Thereafter on 17th July, 1967 a letter was received by the plaintiff being No. CME/C/7 (i) 1199 dated 15th July, 1967 from the respondent whereby he was asked to go to village Kanksa, P.S. Kanksa with all papers and document in connection with the construction of his house there with the Deputy Superintendent of Police C.I.B./S.P.E. namely Sri S. Mazumdar. The plaintiff duly complied with the order. Thereafter on or about 7th August, 1967 the plaintiff was asked by the plaint Civil Engineer to go to the Assistant Vigilance Officer''s office to see the said Police Officer, Shri S. Mazumdar with all papers and documents in connection with his income and expenditure. The plaintiff met the said officer at his office. The officer asked the plaintiff to accompany him to the Punjab National Bank and to show his locker. The plaintiff accordingly handed over the key of the locker to the said Police Officer who opened the locker and inspected the same. Thereafter the plaintiff was called at the C.B.I.''s Office at Calcutta. On 24th January, 1968 he was asked to sign a typed statement of the assets, income and expenditure of the plaintiff which was prepared by the Police Officer. The plaintiff refused to sign the same and requested the officer to handover the said paper to him in order to enable him to inspect the same and to see if they represent a correct statement of the income and expenditure as well as the assets of the petitioner. In the said statement the plaintiff found that a sum of Rs. 7000/- was shown as belonging to the plaintiff though the said sum belonged to his wife as she received the same prior to the plaintiffs joining the defendant company. On 26th January, 1968 the said Police Officer Sri S. Mazumdar came to the quarter of the plaintiff whereon the plaintiff requested him to enquire from his wife if the said sum of Rs. 7000/- really belonged to his wife or not. Mr. Mazumdar refused to make any necessary query from his wife in this respect. On 16th October, 1968 a chargesheet was served on the plaintiff by the Director-in-Charge of the Durgapur Steel Plant alleging misconduct of the plaintiff and asking him to offer explanation regarding the alleged breach of Rule 3 of the Hindusthan Steel Limited Conduct Rules under Clause (XVIII) of Rule 5 of the Hindusthan Steed Ltd. Discipline and Appeal Rules and to submit to the Director-in-Charge of the Steel Plant an explanation showing cause as to why the plaintiff should not be dismissed or otherwise be suitably punished for committing the alleged acts of misconduct. The plaintiff duly replied to the said charge-sheet denying the allegations that he was in possession of assets which were disproportionate to his known sources of income to the extent of about Rs. 15,428.63 P. He further submitted that the charge-sheet was vague and indefinite within the meaning of Rule 3 of the Conduct Rules and the same was not based on clear and definite allegations as required under the Discipline and Appeal Rules. It was also submitted therein that the statement of allegations accompanying the charge-sheet was devoid of any particulars and the alleged excess amount was imaginary and without any basis. It was also stated therein that the said Police Officer Shri Mazumdar never asked him any question regarding the aforesaid amount and the estimate of Rs. 15,428.63 P. being the plaintiffs excess assets was without any foundation whatsoever. The explanation was submitted on 23rd

October, 1968. Thereafter on 11/12th November, 1969, the Director-in-Charge informed the plaintiff by his letter that a Board of Enquiry had been formed with Shri N. Srivastava as Chairman and Sri S. Ekambaran as a member of the said Committee and he was asked to appear before the Enquiry Committee on a certain date. Subsequently however, the plaintiff was informed that the said committee was reconstituted by replacing Shri A.K. Das Gupta as a member in place of Shri S. Ekambaran and the date of enquiry was postponed till the 2nd of January, 1969. The plaintiff submitted before the Enquiry Committee that the alleged charge-sheet against the plaintiff was made under the direction and at the instance of the members of the said Enquiry Committee and as such the members of the Committee were perverse, biased and they had already formed an adverse opinion against the plaintiff. It was further submitted that the said members treated the plaintiff as a convicted accused and the enquiry were held in the presence of Shri P.C. Acharyya, Deputy Superintendent of Police who was functioning as a prosecuting officer and the plaintiff was not allowed to appear through a lawyer nor he was given any opportunity to place his case properly and thereby the entire proceeding was vitiated by illegality and material irregularities resulting in failure of justice. On 11th September, 1969 a notice was received by the plaintiff whereby he was illegally and wrongfully dismissed from his service with effect from 15th September, 1969 i.e., the date of receipt of the said notice by the plaintiff. It has been submitted that along with the aforesaid notice no copy of the enquiry report nor any copy of findings of the enquiry Committee were sent to the plaintiff. It has also been submitted that the order of dismissal is void and inoperative as the plaintiff was not given any opportunity of hearing and after repeated requests the plaintiff was supplied with the Enquiry report on 30th September, 1969 without giving any copy of depositions or any copy of documents or papers produced before the Enquiry Committee. The plaintiff thereafter filed an appeal on 14th October, 1969 before Shri K.T. Chandy, Chairman, Hindusthan Steel Limited, Ranchi. The said appeal was dismissed without hearing the plaintiff on 14th April, 1970. It has been submitted that the Board of Enquiry wrongly held that the plaintiffs wife had Rs. 4,500/- only and not Rs. 7,000/-. It has been further submitted that the premium of Rs. 2,500/- for the plaintiffs Insurance Policy was financed by his father. But this submission of the plaintiff was not properly considered and accepted. It was also submitted that the plaintiffs household expenses as assessed was wrong. It has been further submitted that the finding that plaintiffs assets exceed to the tune of Rs. 7,500/- to his known source of income is wrong and baseless and as such the order of dismissal is unlawful bad and inoperative and the plaintiff should be declared to be continuing in his service.

3. A written statement has been filed in the said suit being Title Suit No. 40 of 1971 on behalf of the defendant company. In para. 7 of the said written statement, it has been submitted that in accordance with the defendant Company''s Conduct Rules and Discipline and Appeal Rules which govern the terms and conditions of services

of the employees under the company it required the plaintiff to submit the statements of the immovable property owned by its employees. It has been further submitted that the defendant company directed the plaintiff to submit the statement of his assets in the prescribed form and to return the same to the Vigilance Officer as desired by the Investigating Officer of C.B.I. On receipt of the said statement from the plaintiff the same was forwarded to the Investigating Officer Shri S. Mazumdar, D.G, Superintendent of Police C.B.I./S.P.E. Division, Calcutta.

4. Thereafter the plaintiff was duly charge-sheeted on the basis of the C.B. I''s report under the conduct and Discipline and Appeal Rules of the defendant company. The charges framed against the plaintiff had been based on definite and clear allegation. The charges were not vague and all available particulars were furnished in the statement of allegations. The Enquiry Committee was duly constituted by the proper Authority of the management as per Rules of the Company. It was also denied that the members of the Enquiry Committee were perverse, biased and had already formed an adverse opinion against the plaintiff. It was also denied that the members of the Enquiry Committee treated the plaintiff as a convicted accused. It had been further stated that the Hindusthan Steel Discipline and Appeal Rules do not allow the delinquent to appear through a lawyer for this purpose but the plaintiff could have taken the assistarfce of a fellow employee. But no such request was made by the plaintiff. The plaintiff was afforded all opportunity of explaining and defending his case. The Enquiry Committee submitted its report and on consideration of the report of the Enquiry Committee the Disciplinary Authority passed an order of dismissal from service of the plaintiff. It had also been stated that the appeal preferred by the plaintiff against the said order of disciplinary Authority before the Appellate Authority was also dismissed after due consideration of the same.

5. On 10th October, 1977 Shri D.K. Chakravor-ty, Sub-Judge, Burdwan, after hearing the learned Advocates for both the parties and on a consideration of the evidences, both oral and documentary (on record, held that the suit was maintainable in its present form in law and issue No. 2 was accordingly decided in favour of the plaintiff. It was found that the disciplinary proceedings was started in breach of Rule (I) of the Discipline and Appeal Rules of the defendant company as there was neither any written complaint nor any report submitted by the Police Officer Sri S. Mazumdar, DSP/SPE who held the preliminary enquiry containing allegations against the plaintiff against his possession of assets disproportionate to his known sources of income. It was further held that the refusal by the Enquiry Officer to supply copies of statements recorded by The Enquiring Officer in the preliminary enquiry of the Police Officers who were examined for the prosecution at the disciplinary proceedings to the delinquent employee tantamounted to denial of natural justice. It was held that the presence of the police officer during the sittings of the Enquiry Committee seriously prejudiced the plaintiff in defending himself

properly and freely. The provision of Rule 2(a) of the Discipline and Appeal Rules Ext. L(1) has also veen violated in as much as the fact finding officer Shri S.B. Majumdar who is required to be other than the officer making the complaint or who is likely to be a witness to the proceeding or who is the disciplinary authority was a witness in the Enquiry Proceeding. Moreover it was further held that though it was evident from the report Ext. J that besides S. Mazumdar and A.K. Bose some other witnesses had been examined in support of the prosecution but none of these witnesses had been examined or produced in this case to justify the findings of the Enquiry Committee. It was further held that the order of removal was made by the Director-in-Charge at the time when he was no longer General Manager of the defendant company and as such there has been a violation of Rule 9 of the Discipline and Appeal Rules (Ext. L) which required that such punishment could be imposed only by the General Manager. It was, therefore, held that the order of removal Ext. ''D'' was illegal and without jurisdiction. It was further held that the charge-sheet was vague and in violation of Rule 3(5) of the Discipline and Appeal Rules Ext. L(1) which required that the statement of allegations should be accompanied ''with the charge-sheet and it should briefly narrate the facts of the incident and the conduct of the employee leading to the charges.

6. It was further held.on a consideration of the charge sheet Ext. A(1) that the administration of the defendant company before completion of the enquiry proceeding, decided to dismiss the plaintiff from service and they were biased against the plaintiff. It has been also held that there has been a breach of the procedure prescribed by the Discipline and Appeal Rules in as much as the plaintiff was examined first and thereafter the witnesses for the complainant were examined. It was lastly held that the excess assets being comparatively small in consideration of the total income of the plaintiff and there being no other allegations of misconduct against the plaintiff, the punishment of removal from service was illegal and unwarranted. It was held that there was no basis for the finding by the Enquiry Committee that the assets at the disposal of the petitioner were disproportionate to the known source of income of the plaintiff. The said order of removal from service was held illegal, void and without jurisdiction and there was a further declaration that the plaintiff would continue in service under the defendant company. The suit was accordingly decreed with costs.

7. Against this judgment and decree the instant appeal has been preferred before this Court. Mr. Somen Bose, learned advocate appearing on behalf of the appellant has submitted that the suit as framed is not maintainable in as much as the contract of employment between the plaintiff and the defendant company is an ordinary contract between master and servant and as such it cannot be specifically enforced. If there is a wrongful termination of the contract of employment the remedy for the employee for such wrongful termination of his employment is by a suit for a declaration that the order of termination is wrongful and for a decree for damages and not for a declaration that the order of termination of service is illegal, void and

without jurisdiction and the plaintiff is deemed to be continuing in service. In support of this submission Mr. Bose further submitted that the petitioner''s employment does not fall within any of the three exceptions as mentioned in U. P. State Warehousing Corporation, Lucknowv. Chandra Kiran Tyagi, 1970-I L.L.J. 32 and the petitioner is, therefore, not entitled to bring the suit for a declaration that the relationship between him and the defendant company subsists after a declaration that the order of termination is illegal and void. It has been further submitted by Mr. Bose that the principles of natural justice are not part of Fundamental Rights and as such the same are not applicable to the instant case of termination of the plaintiffs service by the defendant company. It has been further submitted in this connection that the Hindusthan Steel is undoubtedly a public authority as it is a Government Agency and/or instrumentality and to some extent fair play in action and justice will apply to the orders made by such public authority in case where the impugned order is shocking to the conscience and where the members of the Enquiry Committee are biased towards the delinquent employee.

8. It has been further submitted by Mr. Bose that the plaintiff/respondent is not an employee of a statutory body and the terms and conditions of his service are not governed by statute and as such he has not acquired any status like a civil servant or as an employee of a statutory body, the terms and conditions of whose service are governed by statutory rules, regulations and bye-laws framed under the statute. There has been no violation of any statutory provisioas or statutory Rules as regards the making of impugned order of removal from service of the plaintiff respondent by the defendant company and as such the instant suit for declarations as prayed for is not maintainable.

9. Mr. Bhagabati Banerjee, learned Advocate appearing on behalf of the respondent, has on the other hand, submitted that the suit as framed by the plaintiff/respondent is maintainable in law in as much as the plaintiff/respondent is an employee of the defendant company which is an agency or instrumentality of the State and as such the defendant company is a state within the meaning of Article 12 of the Constitution of India. The defendant/appellant is therefore, subject to some constitutional and statutory obligation as Government is, Article 14 of the Constitution of India prohibits arbitrary action and mandates that order made by the State must be informed with reasons and the same must be devoid of any arbitrariness. In the instant case it has been submitted that the order of termination of service has been made arbitrarily in violation of the Discipline and Appeal Rules of the Company as well as in violation of the principles of natural justice as well as fair play in action. Therefore, the instant suit as framed is maintainable. It has been further submitted in this connection by Mr. Bhagabati Banerjee that since the company is a public authority the principles of natural justice are also applicable to the orders made by the defendant company. The Enquiry Committee did not observe the principles of natural justice while holding the enquiry proceeding and the disciplinary authority also did not observe the principles of natural justice by not

supplying the report of enquiry committee as well as the copy of the evidences on the basis of which the findings of the Enquiry Committee were arrived at, and the witnesses whose names appeared in the Report Exhibit T were also not produced before the Enquiry Committee and the petitioner was thereby deprived of the right to establish that the charges alleged were baseless as well as to test their evidences by subjecting them to cross-examination. Thus there has been a failure of justice by non-observance of the principles of natural justice. The impugned order made by the authority on the basis of the enquiry report is invalid, void and inoperative. The appeal that was preferred by the plaintiff was also not considered in as much as no opportunity of hearing was given to the appellant before the same was disposed of by the appellate authority as required under the Discipline and Appeal Rules of the defendant company and as such there has also been a non-observance of audi alterant partem Rule resulting in the impugned order of dismissal of appeal as illegal, inoperative, void and bad. It has been submitted that the order of dismissal Ext. ''D'' has been made by the disciplinary authority as the Director-in-Charge of the appellant company in utter breach of Rule 12 of the Discipline and Appeal Rules of the company which mandatorily require that the order of dismissal has to be made by the Chairman of the Hindusthan Steel Ltd. and not by the Director-in-Charge as has been done in the instant case. It has been found that at the relevant time when the order of removal from service was made the Director-in-Charge was no longer holding the office of Chairman of the Company.

10. It has also been submitted by Mr. Banerjee in support of his contention regarding maintainability of suit in the form it was filed that the public authority is under an obligation to act fairly and reasonably and not arbitrarily and it is required to observe the Rules and Regulations laying down the terms and conditions of service of its employees even though they are not statutory rules. In support of the submission Mr. Banerjee has referred to several decisions of the Supreme Court. It has, therefore, been submitted that the appeal should be dismissed and the judgment and decree passed by the Court below should be affirmed.

11. The most crucial question that poses itself for determination in the instant appeal is whether the suit out of which the instant appeal arises is maintainable for a declaration that the impugned order of dismissal from service is illegal, void and without jurisdiction and also for a declaration that the plaintiff is continuing in service. It is well settled that the ordinary contract of master and servant cannot be specifically enforced even if the contract is wrongfully terminated by the employer and in such cases the only remedy of the employee is to bring an appropriate action for damages for such wrongful termination of the contract of employment, and not for a declaration that the contract of employment still subsists and the order of termination of service is illegal, void and unwarranted.

12. Reference may be made in this connection to the decision in the case of Ridge v. Baldwin (1964 AC40 a page 65) where Lord Reid has observed that a case of

dismissal falls into three classes: Firstly dismissal of a servant by his master, secondly dismissal from office held during the pleasures 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. It has been further observed that in the 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 question of being heard can only arise where the authority employing the servant is under same 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.

13. The position of Government servant is one more of status than of contract. The origin of the Government service is contractual i.e. there is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by the consent of the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The hall mark of status is the attachment to a legal relationship the attachment of rights and duties imposed by the public law and not by mere agreement of the parties. The above observations had been made by Ramaswami, J., in the case of Roshan Lal v. Union of IndiaR. 1967 S.C. 1889 at p. 1894 para. 6.

14. The earliest case where a declaration was made in a suit that the order of termination of the employment was bad, illegal and void being in breach of statutory provisions and the plaintiff continued in service was the case of High Commissioner for India v. I.M. hall 75 IA 225 : AIR 1944 PC 121. The decision was delivered by the Judicial Committee.

15. The Supreme Court in the case of S.R. Tewari Vs. District Board Agra and Another, had held that the Court will not ordinarily force an employer to retain the services of an employee whom he no longer intends to employ. 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 of the Constitution 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 the worker whom he does not desire to employ, is recognised. The Courts are also invested with power to declare invalid the act of a statutory body, if by doing 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.

16. This decision has been relied upon by the Supreme Court in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, , where it has been held that a contract of personal service will not be enforced by an order for specific performance nor it will be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the service of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service as it will not then be a mere case of a master terminating the service of a servant. Thus there are three exceptions where such declaration can be given viz (1) a public servant who has been dismissed from service in contravention of Article 311; (2) reinstatement of a dismissed worker under the Industrial Law or by Labour or Industrial Tribunals, (3) a statutory body when it has acted in breach of a mandatory obligation imposed by statute.

17. A similar view has been reiterated by the Supreme Court in the case of Indian Airlines Corporation Vs. Sukhdeo Rai, , where Mr. Justice J.M. Shelat has observed relying on the decision in the case of Ridge v. Baldwin that 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 contract 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 the termination of service of the respondent in breach of Regulation framed u/s 45 of the Indian Airlines Corporation Act, 1953 the respondent to get such a declaration as Regulations have not affected the power of the authority under the Act to terminate the service of the delinquent employee. Similar view was expressed in the case of Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, , and it was held in that case that breach of regulations framed in pursuance of the provisions of the Act will not confer any statutory status on employee and as such no suit for declaration that his employment still subsisted and the order of termination is illegal and invalid can be maintained. This view however, was negatived in the decision delivered by A.N. Ray, C.J., in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, where it has been observed as follows:

18. That the Rules and Regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of

law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal of removal is in contravention of statutory provisions. It has also been held that the expression "authorities" under Article 12 is wide enough to include within it every authority created by a statute and functioning within the territory of India or under the control under the Government of India. It includes all constitutional or statutory authorities on whom powers are conferred by law. It has also been held that the statutory authorities cannot deviate from the conditions of service embodied in the Rules and Regulations and any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations.

19. It is for the first time that Mathew, J., in the aforesaid case while discussing the meaning of the word other authorities in Article 12 has observed that the concept of State has undergone drastic changes in recent years and the State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation. It has been further observed that the State can act only through the Instrumentality or agency of natural persons or juridical persons. Therefore, there is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State. These public corporations are legal entities created by Special statutes of Parliament charged with the duty of carrying out specified Governmental functions in the national interest, those functions being confined to a comparatively restricted field and subjected to the control of the executive while the corporation remains juridically an independent entity not directly responsible to the Parliament. Such corporations are regarded as state within the meaning of Article 12 of the Constitution and these public corporations fulfil public tasks on behalf of the Government. They are public authorities subject to control by Government.

20. It has been further observed by Mr. Mathew, J. as follows: Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, at p.427

The original concept of employment was that of master and servant. It was therefore held that a court will not specifically enforce a contract of employment. The law has adhered to the age-old rule that an employer may dismiss the employee at will....The Rule that an employer can arbitrarily discharge an employee with or without regard to the actuating motive is a rule settled beyond doubt. But the rule became settled at a time when the words ''master'' and ''servant'' were taken more literally than they are now and when as in early Roman Law, the rights of the servant like the rights of any other member of the House hold, were not his own, but those of his pater families. The over tones of this ancient doctrine are discernible in the judicial opinion which rationalised the employer''s absolute right to discharge the employee. Such a philosophy of the employer''s dominion over his

employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers. The conditions have now vastly changed and it is difficult to regard the contract of employment with large scale industries and Government enterprises conducted by bodies which are created under special statutes as mere contract of personal service.

21. It has been observed in paragraph 46 at page 428 of the said report in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, that employment under public corporations of the nature under consideration is public employment and therefore employee should have protection which appertains to public employment. This observance has been made relying on the decision in Malloch v. Abardeen Corporation (1971) W.L.R. 1578 .

22. It has been further observed by Mathew, J. in the above case that the Court must adopt the attitude that declaration is the normal remedy for a wrongful dismissal in case of public employees which will only be refused in exceptional circumstances. The law of declaration should be a ready made instrument to provide reinstatement in public sector....The law of master and servant has not kept space with the modern conditions and the mandate of equality embodied in the constitution. The Discipline and Appeal Rules of the defendant company though have no statutory force as they are framed in pursuance of powers conferred by statute yet they are to be followed by the public corporations. The principle laid down by Justice Frankfurter in Viturelee v. Seaton (1959) 359 U.S. 535 at pp 546-547 should apply to this case. The principle is as follows:

An executive agency must be rigorously held to the Standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a definite procedure, even though generous behind the requirements that bind such agency,

that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firstly established and, if I may add, rightly so. He that takes the procedure sword shall perish with that sword.

23. It was further held in the said decision that there is no substantial difference between Rules and Regulations, in as much as both are made under powers conferred by the statute and as such the statutory authority cannot deviate from the terms and conditions of service laid down by such Rules and Regulations. Any deviation will be enforced by legal sanction of declaration of invalid action in violation of Rules and Regulations. This decision has been rendered following the decisions in S.R. Tewari v. District Board, Agra 1964-I L.L.J. 1, Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, and Sirsi

Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, as well as State Electricity Board, Jaipur v. Mohanlal 1968-I L.L.J. 257.

24. The observation of Mathew, J. in Sukh Dev Singh v. Bhagatram (supra) regarding employment in public corporation has been followed in the case of The Manager, Government Branch Press and Another Vs. D.B. Belliappa, at p. 161, paragraphs 20 and 26, Sarkaria, J. who spoke for Supreme Court observed as follows:

Having willingly accepted the employment on terms offered to him, the respondent cannot complain against the impugned action taken in accordance with those mutually agreed terms. The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th Century and the first half of the 20th Century which rationalised the employer''s absolute right to discharge the employees....But that philosophy is incompatible with vastly changed and changing socio-economic conditions and more of the day much of the old, antiquated and unjust doctrine has been eroded by judicial decisions and legislations, particularly in its application to persons in public employment, to whom the constitutional protection of Articles 14, 15, 16, and 311 is applicable. The argument is therefore, overruled.

25. It is pertinent to refer in this connection to the observation of A.N. Ray, C.J. in the case of Sirsi Municipality v. C.K.F. Tellia 1973-I L.L.J. 226 at page 230, para 15 which are as follows:

The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed 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 finding 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 as instance of specific performance of contract for personal services. 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.

26. In Executive Committee of Vaish Degree College v. Lakshmi Narain and Ors. *(1976) 2 L.L.J. 163. Bhagawati, J. relying on the decision in McCledlant v. Nothern

Ireland Health, Service Board (1957) 1 W.L.R. 594 (1957) 2 All E.R. 129 observed as follows:

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.

It has been further observed at para 2, page 182:

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 can disregard the termination as ineffective and claim a declaration that his service is continuing.

The learned Judge did not make any final pronouncement upon this question.

27. In the case of Mc Cledlant v. Northern Ireland General Health Services Board (supra), it was held by the House of Lords that the employment of the appellant was not terminated in accordance with the terms of the contract of employment in as much as Clause 12 of the contract of employment does not empower the Board to terminate the service of a permanent employee in service of a reasonable notice without complying with the terms and conditions provided therein viz. on the ground of gross misconduct or inefficiency or unfit to merit continued employment. The order of termination was held bad and the plaintiff was declared to be continuing in service.

28. From all these decisions it is quite clear that the employees under the public corporation be it a company or a registered society which is an agency or an instrumentality of the State and so State within the meaning of Article 12 of the Constitution of India cannot be deemed to be an ordinary employee and the contract of service between such employee and the public corporation cannot be termed to be one of contract of employment between ordinary master and servant. The State now-a-days is no longer a Police State but it is a welfare State and it is vested with the duties and responsibilities of carrying on trade and commerce of national importance and also any trade as has been provided in Article 298 of the Constitution of India. These activities are now-a-days sought to be carried through the agency or instrumentality of public corporations. In these circumstances the public corporations now-a-days employ large number of persons to carry out their functions efficiently. The employees of the public corporations, therefore, if treated like employees under private employment and their relationship with the employer is deemed to be that of an ordinary master and servant relationship terminable at any point of time at the sweet will and pleasure of the employers then it will create a

serious situation and large number of employees of these public corporations will be absolutely at the mercy, whims and caprice of the management of the public corporations. Considering this aspect of the matter and also of the observations made by the Supreme Court in the cases cited hereinbefore as well as by the House of Lords in the case mentioned hereinbefore I am constrained to hold that the employees of the public corporation should not be regarded as ordinary servants under the master and their contract of service should not be treated as one between master and servant for which no action can be brought for enforcement of the said relationship if terminated arbitrarily and wrongfully and in violation of the Rules of Discipline framed by the Company seeking appropriate declarations from the Court. I am emboldened to make this observation by reason also of the fact that these public corporations including the defendant-company are undoubtedly instrumentality or agency of the state and as such they are State falling within the expression "other authorities" as mentioned in Article 12 of the Constitution of India. Undoubtedly these public corporations as state are subject to the same constitutional and statutory obligations as the State is as has been observed in AIR 1976 SC 888 at 903 by Bhagwati, J. This view has also been reiterated in more clear and lucid terms in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , where in paragraph 21 at page 230, it has been held that "where a corporation is an instrumentality or agency of Government it would, in the exercise of its power of discretion be subject to the same constitutional or public law limitations as Government. The Rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into contracts or otherwise, it cannot act arbitrarily and enter into relationship with any persons it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.""

29. It has farther been observed by Bhagwati, J. who speaks for Supreme Court in the same decision that "this rule also flows directly from the doctrine of equality embodied in Article 14. It has been observed in E.P. Royappa v. State of Tamil Nadu 1974-I L.L.J. 172 and in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory. It must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or nan arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party but its action must conform to some standard norm

which is rational and non-discriminatory."

30. Following the observations in Ramana Dayaram Shetty v. I. A. A. of India (supra), it has been further observed in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, that every activity of the Government has a public element in it and it must therefore, be informed with reasons and guided by public interest. If the Government awards a contract, or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid. Similar observation has been made in the case of Som Prakash Rekhi v. Union of India , It has been held that the Bharat Petroleum Company is an agency or instrumentality of the State and as such it would be an authority and therefore state within the meaning of Article 12 of the Constitution of India. It has been, further held that the said corporation being a state is subject to the same constitutional limitation as Government. Therefore from the above pronouncements of the Supreme Court it is now quite clear that public corporation which is a state within the meaning of Article 12 of the Constitution has to observe Article 14 of the Constitution in the matter of exercise of its power as well as discretion in terminating the service of its employee. In other words, the Hindusthan Steel Company, the defendant cannot act arbitrarily in terminating the service of the petitioner-respondent, but it has to follow and/or observe the Disciplinary and Appeal Rules and also the Conduct Rules framed by the company as well as the disciplinary rules. The defendant company cannot at its sweet will and pleasure arbitrarily terminate the service of some of its employees without following its Discipline and Appeal Rules as well as the Conduct Rules of the company; while in other cases it may observe and/or follow these Rules, This will undoubtedly give rise to a discriminatory treatment prohibitated by Article 14 of the Constitution and thereby it will frustrate the principle of equal treatment in the matter of public employment as envisaged in Article 14 of the Constitution. In the instant case it has been found by the learned subordinate Judge that there has been no observance of the Discipline and Appeal Rules more particularly Rule 12 and its various Sub-clauses in the matter of initiating as well as in conducting the disciplinary proceedings against the petitioner/respondent and there has been also a procedural violation by non-compliance with relevant provision of Discipline and Appeal Rules by not examining first the prosecution witnesses in support of its cases but asking the delinquent employee i.e. the petitioner/respondent first to examine himself and his witnesses in support of his defence. It has been also clearly found that the charges were vague and indefinite and they were not accompanied by a clear statement of allegations of facts leading to the framing of these charges as required under the Discipline and Appeal Rules. It has also been found by the learned subordinate Judge that some of the witnesses who were examined in the fact finding enquiry were neither produced nor examined before the Enquiry Committee and no

opportunity of cross-examining them and thereby controverting their deposition was given to the petitioner. It was also held that the relevant papers and documents which were relied upon and also the copies of the depositions were not given to the petitioner in order to enable him to prefer an appeal effectively against the order of dismissal from service made by the Disciplinary Authority before the Appellate Authority and this had seriously prejudiced and/or affected the petitioner in preferring an appeal.

30. It will not be out of place to mention in this connection that the appellant-company which is a public corporation and an agency of the Government has to follow the Discipline and Appeal Rules laying down the terms and conditions of service of its employes in terminating the services of its employees even though those rules are not statutory. Non compliance with the Discipline and Appeal Rules framed by the defendant company will render the order of dismissal from service as illegal, void and inoperative. This is an well known principle laid down by Justice Frankfurter in Vitarelli v. Seaton (supra) and the same is applicable to the instant case. I have already found hereinbefore that the defendant company did not at all comply with the procedure prescribed by Discipline and Appeal Rules of the defendant appellant company in making the impugned order dismissing the respondent from service. The order of dismissal of the respondent from service is, therefore, illegal, void and inoperative.

32. It is very significant to mention in this connection that no argument was advanced on behalf of the defendant company as to the merits of the findings arrived at by the trial Court. In view of my findings hereinbefore I am constrained to hold that the instant suit as framed with the declaration as prayed for therein is maintainable as has been held by the trial Court.

33. The next question that comes up for consideration is whether the principles of natural justice are applicable to the instant case or not. It is urged by Mr. Bose, learned Advocate appearing on behalf of the company that the principles of natural justice are not applicable to the instant case unless it can be shown that it does not form a part of the fun damental right or that the impugned order has been made in a manner which is shocking to the conscience and the order amounts to nullity and illegality.

34. Mr. Bhagabati Banerjee, learned Advocate appearing on behalf of the petitioner has submitted that the principles of natural justice will apply to the disciplinary proceedings initiated by its company against the petitioner-respondent and there being no compliance with the said rules of natural justice by not giving the petitioner any opportunity of hearing and in not supplying the relevant papers and documents relied upon as provided under the Discipline and Appeal Rules as well as in meeting out disproportionate punishment to the respondent renders the order in valid, inoperative and void. Some decisions have been cited at the bar by Mr. Banerjee.

35. The principles of natural justice are not embodied Rules nor they can be regarded as part of Fundamental Rights embodied in Part III of the Constitution. There are two main principles on which the rules of natural justice are based viz. Nemojudex in Suo causa and audi alteram partem. It has been observed by Hegde, J. in A.K. Kraipak v. Union of India AIR 1950 S C 150 at 156 that the aim of the principle of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These Rules can operate only in areas not covered by any law validly made. In otherwords they do no supplant the law of the land but supplement it. "The aim of the rules of natural justice is to prevent miscarriage of justice and so they are applicable both to quasi-judicial as well as to ad* ministrative enquiries unless statutory provision either expressly or by necessary implication excludes the application of any rule of natural justice. In The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, , K. Iyer, J. observed as follows: Natural justice is not an unruly horse, no lurking land mine, nor a judicial care all. If fairness is shown by the decision maker to the man proceeded against, the form features and the fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. The principles of natural justice apply both to the judicial proceedings as well as to the administration proceedings as has been held in R. E. Gramming Board, Great Britain exparte Benaim and Anr. (1970) 2 All E.R. 528 at 533. A.N. Ray, C.J. held in the case of Daud Ahmad Vs. The District Magistrate, Allahabad and Others, that the principles of audi alteram partem to the exercise of any statutory power depends primarily on the purpose and provisions of the Act. It has been further observed that the nature of the power and condition in which it is exercised that will occasion the invocation of the principles of natural justice. This Court has held in Central Inland Water Transport Corporation Ltd. v. Pabiren-du Sen and Ors. (1982) H&N page 427 that the corporation is an instrumentality of the Government and as such State within the meaning of Article 12 of the Constitution. The contract of employment between the corporation and the respondent employee is one of master and servant. This Rule of natural justice applies in such case and as the same has not been followed, the order of dismissal cannot be sustained. The decision, however, it has been submitted by Mr. Basu, should not be relied upon in as much as the same is pending in appeal before the Supreme Court.

36. It is relevant to mention in this connection a passage from De Smiths Judicial Revenue of Administrative Actions, 4th Edition, pages 157-162.

37. In English Law Rules of Natural Justice perform a function within a limited field, similar to concept of "procedural due process" as it exists in the United States. These rules are not ex necessitate those of Courts of justice but rather these desiderata which we regard as essential, helpful to justice, but not indispensable to it, which by their rules of evidence and procedure, our courts have made obligatory in actual trials themselves. English law requires two principles of natural justice, i) Nemo

judex in cause sua, an adjudicator be disinterested and unbiased, and ii) audi alterant partem the parties be given adequate notice and opportunity to be heard.

38. No accepted standard of substantive natural justice to which judgments must conform. The duty of fairness increasingly relied upon by Courts as a criterion of procedural regularity, may emerge as a fertile source of substantive standards with which decision makers must comply. Natural justice is called as "universal justice" fairplay in action "fairness writ large and juridically."

39. Considering the above decisions it is now well settled that the principle of natural justice will apply in all cases where the order in question has got civil consequences i.e. order which adversely affects the rights of the aggrieved party. This application of principle of natural justice is not confined only to judicial proceeding, and quasi judicial proceedings but also to administrative proceedings where this principle of audi alteram partem can be invoked in the case of termination of contract of service by the master. Barring the decision in (1982) 1 C.H.N. page 427, I have not come across any other decisions directly on this point regarding the applicability of the rules of natural justice to order made by a private employer in terminating the contract of employment. In my opinion since the defendant company is a public corporation and a State within Article 12 of the Constitution it cannot act arbitrarily or unreasonably and it has to act fairly, properly and reasonably. This fair play in action, in my opinion, pre-supposes that proper opportunity has to be given to the delinquent employee to place his case and to prove that the allegations contained in the charge-sheet framed against him are without any basis or the same have not been proved. In other words fair play in action and justice demand that justice should not only be done but it must appear to have been done. I have said already that the trial Court has clearly found on a consideration of the entire evidences both oral and documentary as well as of the relevant provisions of the conduct Rules, as well as the Discipline and Appeal Rules framed by the defendant company that the relevant provisions have not been complied with in proceeding with the disciplinary proceedings against the respondent and in arriving at the conclusion that the charges have been proved against the petitioner and the making of the order of dismissal from service. It has also been held that the petitioner-respondent was not supplied with all relevant papers to enable him to file an Appeal properly and effectively and he was not heard before the appeal was dismissed. The order of dismissal of the Appeal by the appellate authority was held to be arbitrary.

40. These findings of the trial Court have not been challenged before this Court nor any argument has been advanced to that effect. Therefore, these findings remain uncontroverted and unchallenged.

41. For the reasons aforesaid the contention raised on behalf of the appellant having failed, this appeal fails and it is dismissed. The judgment and decree of the trial Court are hereby affirmed.

There will be no order as to costs.

Samir Kumar Mookherjee, J.

42. I agree.