Dr. P. Chattopadhyay Vs The Institute of Cost And Works Accountants of India and Others

Court: Calcutta High Court

Date of Decision: Sept. 10, 1986

Acts Referred: Companies Act, 1956 â€" Section 167, 617
Constitution of India, 1950 â€" Article 12, 132, 133(1), 14, 16
Contract Act, 1872 â€" Section 16(1), 23, 25
Cost and Works Accountants Act, 1959 â€" Section 12(2), 15, 16, 16(1), 16(1)(a)
General Clauses Act, 1897 â€" Section 14, 15, 16
Government of India Act, 1935 â€" Section 240(3)
Reserve Bank of India Act, 1934 â€" Section 58, 58(1), 58(1)(2)(i), 7(1), 7(2)

Citation: (1987) 1 CALLT 179 : (1987) CALLT 179

Hon'ble Judges: Manash Nath Roy, J; Mahitosh Majumdar, J

Bench: Division Bench

Advocate: Sundarananda Paul, Mr. Ashim Kumar Mukhopadhyay, for the Appellant;Subhas Banerjee, Tapan Sen, for the Respondent

Final Decision: Allowed

Judgement

M.N. Roy, J.
The Institute of Cost and Works Accountants of India, Respondent No.1 (hereinafter referred to as the said Institute), is a

body corporate and constituted u/s 2(f) of the Cost and Works Accountants Act, 1959 (hereinafter referred to as the said Act) and the appellant

was appointed as a Director of Research of the same sometime in September 1969. He as a petitioner moved and obtained Civil Order No.

15007 (W) of 1981, challenging the validity of the decision of the Council of the said Institute, as communicated to him by the Secretary of the

same, by his letter dated 19th October 1981, whereby the said Secretary, further to his letter dated 23rd September 1981, informed him that he

was directed by the Council of the said Institute to regret to inform the appellant that the Council of the said Institute was unable to allow him to

withdraw his resignation, which was already accepted with effect from 1st September 1981 and as such, requested the appellant to hand over the

charge to the said Secretary and collect from the said Institute whatever amount was due to the appellant. In his writ petition, the

appellant/petitioner also claimed that he having withdrawn his letter of resignation, in the facts and circumstances which would be referred to

hereinafter, before the same became effective, the impugned order as mentioned above, was illegal and unwarranted.

2. It should be noted that the said Act was promulgated for the purpose of making provisions for the regulation of the profession of Cost and

Works Accountants and the Cost, and Works Accountants Regulations, 1950 (hereinafter referred to as the said Regulations) have been framed

under or in terms of the provisions of the said Act. There was or has been no dispute that the appellant had joined in the post as mentioned above,

on or about the date as indicated herein before and was in the said post for a long time. It has been claimed by him that during his centre of

employment as such, some attempt was resorted to with a view to get rid of him from the said Institute with effect from 1st September, 1981. It

was the appellant''s claim that during his employment as above, he had rendered his services with reputation to the said. Institute and for promotion

and guidance of research in the various branches of Cost and Management Accountancy and his original contributions in the field were richly

accoladed and appreciated or recognised, both within and outside the country. It was the appellant''s further contention that he had a brilliant

academic career and such brilliance was also reflected in the discharge of his duties so far as the said Institute was concerned and in fact, he had an

unblemished career, apart from the fact that he had contributed, to the publications of different books and research papers of the said Institute.

3. It has also been stated by'' the appellant that in course of his tenure of service as above, he received the best award as an accounting scholar for

the year 1975-76, in recognition of his distinguished career as an accounting scholar. He has also stated to have received his M.A. Degree in

Commerce from the University of Calcutta in 1952 and thereafter, he got himself associated as a Research Officer to the Special, Committee for

Commerce Education under the Ministry of Education of Social Welfare and then he became a member of the said Institute in 1964, after

successful completion of the necessary course. The appellant has also given the particulars as to how and when he got his Ph.D. Degree in

Management from Delhi University in 1965 and has started that before joining the services of the said Institute, he held important position as a

professor of the Indian Institute of Foreign Trade and Faculty of Business Management in Delhi University. It was also his case that during his

continuance of service under the said Institute he had to his credit various notable publications and was also commissioned by the Indian Council of

Social Sciences Research, New Delhi, to prepare and survey of research in public enterprises in India. The appellant, has also given the other

scholastic works done and performed by him and some decorations has receded by him for such work.

4. The said Act, in terms of section 2(c) postulates the formation of a ""Council"" for the said Institute and the functions to be performed by that

Council, have been indicated in section 15 of the said Act to the following effect : -

(1) The duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include.

(a) the examination of candidates for enrolment and the prescribing of fees therefore

(b) the registration and training of students:

(c) the prescribing of qualifications for entry in the Register:

(d) the recognition of foreign qualifications and training for purposes of enrolment:

(e) the granting or refusal of certificates of practice under this act

(f) the maintenance and publication of a Register of persons qualified to practice as cost accountants:

(g) the levy and collection of fees from members, examinees and other persons:

(h) the removal of names from the Register and restoration to the Register of names which have been removed.

(i) the regulation and maintenance of the states and standard or professional qualifications of members of the Institute:

(j) the carrying out, by financial assistance to person other than members of the Council or in any other member, of research in accountancy;

(k) the maintenance of libraries and publication of books and periodicals relating to cost accountancy and allied subjects;

(l) the exercise of disciplinary powers conferred by this Act and the constitution of the Council of the said Institute is to be made in terms of

Section 9 of the said Act which lays down:

(1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the Junctions assigned to it by or

under this Act.

(2) Thee Council shall be composed of -

(a) not rare than twelve persons elected by members of the institute from, amongst the fellows of the 1nstitute chosen in such manner and from

such regional constituencies as may be specified in this behalf by the Central Government by notification in the official Gazette: and

(b) not more than four persons nominated by the Central Government.

5. Such being the position, the said Council is really constituted by numerous persons and according to the appellant the present members of the

Council under the said Act were impleaded as Respondents in the writ petition, for the purpose of avoiding any controversy with regard to non

joinder of necessary parties. There is no doubt that no exception can be taken so far as the maintainability of the writ petition on the ground of non-

joinder or mis-joinder of any party and the Secretary of the said Institute, who is a Chief Executive Officer of the same, has also been

appropriately impleaded in the proceedings.

6. It was the case of the appellant that after his entry into the services, he had expected the assignments with all facilities to promote research in

Management Accountancy since his association with the said Institute was primarily for the fulfillment of such object. The appellant has stated that

he having brought up in the academic traditions as a researcher, he was expecting that he would be assigned to guide research work for promotion

of original thinking into varied domains of particular academic discipline of Management Accountancy, but all his ideas and aspirations could not at

all been satisfied in the manner in which he was asked to discharge his duties in his posting under the said Institute as mentioned above and it was

his firm belief and assertion that he was not given chance to carry on with the research works as he had some disagreement with the Secretary of

the said Institute, who, in fact, because of such disagreement was out to be little the appellant and, subject him to ignominy and in fact, the said

Secretary, roulade the works of the appellant very difficult as a result whereof, his research works or the ideas for the happenings, as a result

whereof the Secretary concerned behaved with him in the manner as indicated herein before and in fact, he has ultimately stated that because of

such behaviour, he had no other alternative but to tender his resignation, the other particulars or the facts leading to the same would be indicated.

hereinafter.

7. The appellant has stated that in terms of his appointment he could sever his relationship with the said Institute after clear three months notice and

as such, he caused a letter of resignation from his post of Director of Research of the said Institute served with immediate effect by his letter dated

4th May 1981 and it was his cost that on receipt of that letter, the Secretary of the said Institute requested him to have his letter of resignation

modified and accordingly, the appellant on 6th May 1981, sent another letter incorporating the necessary compliance of three months notice and

therein, he specifically, mentioned that he wanted to be relieved from his-duties of the concerned post with effect from 1st September 1981. The

letter of 4th May 1981, only indicated that the appellant wanted to submit his resignation from the post of Director of Research of the said Institute

with immediate effect and the other letter of 6th May 1981, really gave the reasons in continuation of the said letter of 4th May 1981 and that too

in our view, for severing all connections with the said Institute by an employee like the appellant. It would appear that during the maintenance

period of notice as mentioned in the said letter of 6th May 1981, on or about 24th August 1981, the appellant withdrew the same and informed the

President of the said Institute that about such intentions. It was his case that on receipt of the above mentioned subsequent letter, the Secretary of

the said Institute on 29th August 1981, addressed a letter to his intimating thereby that the concerned letter of withdrawal of resignation has been

referred to Executive Committee and the said Committee has decided to the referred matter by the Council of the said Institute for consideration

and it was also informed to the appellant that thus a final decision in the matter, in whatsoever manner, would be communicated to him only after

the next meeting of the Council of the said Institute, which was scheduled to be held on 17th October, 1981. The appellant has stated that by such

communication, the decision in the matter of acceptance of the resignation was in fact postponed or kept in abeyance will 17th October 1981 and

according to him, on the basis of such letter, he was allowed to carry on the functions of his once even after the expiry of the notice period, i.e., 1st

September, 1981 and he, in fact, performed his functions as usual and after, the said notices period. According to the appellant the severance of

relationships between the parties was not thus given effect to coinciding with. the last date of the expiry of the notice period and so the contractual

relationship between the parties had revived as the appellant discharged his duties from on or after 1st September 1981. It was the appellant''s

case that from the correspondence he was, given to understand that he would be required to wait till a final decision in the matter was taken, Apart

from Section 15 of the said Act, the particulars thereof have been quoted herein before, the appellant also made a specific reference to Regulation

85(a) which has laid down that the Executive Committee of the said Institute shall amongst others perform the functions of (a) maintenance, of the

office of the Council and for this purpose, the Executive Committee may employ, suspend, discharge or re-employ the necessary staff on such

terms and conditions as it may deem fit:

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) ....., and

indicated that the said provisions do not make provisions for any allocation of function of the Executive Committee for consideration of a letter of

withdrawal of resignation and as such, the said Committee was not vested with the specific function and so they could not refer back the matter for

consideration by the Council. In fact, the appellant has contended that the review which was done in the instant case by the Council, was not

authorised and such power of review was not vested with the Council under the said Act; It was also the assertion of the appellant that before the

expiry of the period of notice, in view of the letter of withdrawal of resignation as mentioned herein before, he gave a complete go-by to the

concerned act of resignation and such act, being on his free volition, an element of mutuality would not come into play at all, as it was a voluntary

act of withdrawal of resignation by him.

8. The appellant has pointed out that thereafter, the Secretary respondent No. 16 of the said Institute, by his letter of 19th October 1981,

intimated that the Council regretted that they were enable to allow the appellant to withdraw his resignation and he was accordingly requested to

hand over the Charge to the said secretary and to collect his dues as indicated herein before. The appellant has stated that he could not agree to

comply with such dictates and thereafter he moved this court and according to him the Council of the said institute had transgressed and travelled

beyond their jurisdiction by disallowing him to withdraw his resignation, because such act of withdrawal was an unilateral act of the appellant, out

of him free and independent violation and the council was only requested to act with a sense of responsibility by reciprocating the said act. The

appellant has further contended the act or actions ox the said Council in the instant cage, to be ex facie, without jurisdiction and any statutory

sanction, apart from being contrary to their powers under the said Regulations.

9. Before the learned Trial Judge it was submitted on behalf of the Respondent that immediately after submission of the two letters dated 4th and

6th May 1981, respectively, the Executive Committee of the said Institute considered them and by the letter of 6th June 1981, intimated the

appellant that his resignation letter had been accepted with effect from 1st September 1981 by that Committee. The above decision was admittedly

communicated by the Secretary of the said Institute respondent No. 16. It was submitted on behalf of the Respondents that the Executive

Committee, which was empowered under Sections 15 and 16 of the said Act read with Regulation 85(a) of the said Regulations to take decision in

the matter had already taken a decision and as such, the appellant could not have any grievance in the matter. We have quoted the terms of

Section 15 earlier and Section 16 which deals with staff, their remuneration, and allowances, read as thus:

(1) for the efficient performance of its duties, the Council may -

(a) appoint a Secretary who may also, if so decided by the council, act as Treasurer;

(b) appoint such other persons on its staff as it deems necessary;

(c) require and take from the. Secretary or from any other employee of the Council such security for due performance of his duties as the Council

considers necessary;

(d) fix the salaries, fees allowances and other conditions of service of the Secretary and other employees of the Council;

(e) with the previous sanction of the Central Government fix the allowances of the President, Vice-President and other members of the Council and

its Committees.

(2) The Secretary of the Council shall be entitled to participate in the meetings of the Council and the Committees thereof but shall not be entitled

to vote thereat.

The terms of regulation 85(a) leave also been indicated herein before. On the basis of the provisions as mentioned above, the Respondent,

contended before the learned Trial Judge that the appellant was employed as a Director of Research of the said Institute by the Executive

Committee on certain terms and he accepted those terms. In fact, those terms were embodied in the letter dated 22nd July 1949 as issued by the

Secretary of the said Institute to the appellant. It was submitted that the appellant''s terms of service and conditions of employment were strictly

governed by the terms as embodied in the letter as mentioned above and the same was not governed or in other words regulated by any statutory

Rules or statutory provisions or any statutory Regulations and in fact the appellant''s relationship with the said Institute was purely a relationship of

master and servant, a contractual relationship and as such, for breach of such or any contractual relationship, the application for appropriate writs

would not be maintainable.

10. On, the pleadings, the admitted facts before us are and before the learned Trial Judge were, that the appellant/petitioner was appointed as

Director of Research of the said Institute and had joined his post on the date as mentioned herein before and according to him, he was duly

discharging his duties and responsibilities of the concerned post. But, ultimately he could not fulfil his aims in the matter of such discharging of

duties, because the Secretary Respondent No. I6 and other staff were ill-disposed towards him and they had created multifarious difficulties in the

way to discharge, his connected duties and responsibilities duly and as a result whereof on 4th May 1981, the letter of resignation as mentioned

above, was submitted and thereafter, by the subsequent letter of 6th May l981, the appellant/petitioner had really given a notice to the said

Institute, covering the notice period and relinquishing his charge as Director of Research of the said Institute with effect from 1st September 1981.

There is also no doubt that on 24th August 1981 i.e., before the notice of resignation became effective, the appellant/petitioner withdrew his

resignation as mentioned above and on such facts, it was pleaded by him or on his behalf before the learned Trial Judge, that the Executive

Committee of the said Institute which was empowered under Sections 15 and 16 of the said Act as quoted, herein before, read with Regulation

85(a) of the said Regulations as mentioned above and which were framed u/s 39 of the said Act, was alone competent to decide the matter in

issue, but, instead of exercising such functions, they had referred the matter to the Council of the said Institute and the decision as impeached, was

taken by that Council to the effect that the resignation as submitted by the writ petitioner was accepted and he could not be allowed to withdraw

the same. Such communication was made to the writ petitioner by the Secretary of said Institute, by his letter dated 19th October 1981. The said

action was also claimed to be wholly without jurisdiction on and unwarranted and it was also pleaded that the writ petitioner having been permitted

to action in the said Institute even after the expiry of the period of notice, i.e., after 1st September 1981 for 2/3 days, it would be deemed that the

relationship had not ended, but the same was allowed to continue and contract of employment subsisted.

11. It was the contention of the writ petitioner before the Learned Trial Judge that the order as impeached and made by the Council of the said

institute being wholly illegal and unauthorised, the same could not be given elect to and since the writ petitioner intimated the authorities of the said

Institute expressly that he withdrew and/or revoked his letter of resignation, prior to the same having became effective on 1st September 1981, the

authorities of the said Institute were not authorised and incompetent to accept the resignation letter submitted by him even after such withdrawal

and for revocation and as such, they also could not have passed the order as challenged. The said Institute on the other hand claimed and

contended that they were empowered under Sections 15 and 16 of the said Act read with Regulation 85(a) of the said Regulations to take

decision in the matter and in fact, such decision having been taken, the writ petitioner could riot have any grievance and it was also contended that

the writ petitioner having been employed as Director of Research of the said Institute by the Executive Committee of the same on certain terms and

he having accepted those terms which were embodied in the letter of 22nd July 1969, therefore, was bound by the terms and conditions of

employment and his terms of employment and conditions of service not having been governed by any other statutory rules or provisions or any

statutory regulations, the relationship between the writ petitioner and the said Institute was purely one of contractual relationship between master

and servant and as such, his application for appropriate writs, was not maintainable.

12. On the question whether relationship between the writ petitioner and the said Institute his employment was one of contractual relationship or

the same was governed by any statutory rules or regulations, the Learned Trial Judge firstly, considered the question as to whether the Executive

Committee of the said Institute has considered letters of resignation, dated 4th May 1981 and 6th May and the decision was arrived at by them.

On this score, the learned Trial Judge has observed that from the statements as incorporated in the affidavit-in-opposition and as affirmed by the

Secretary of the said Institute, it would appear that those letters of resignation were considered by the Executive Committee of the said Institute

and such resignation was accepted with effect from 1st September 1981 and from the way and manner in which the answer to such statements

was given by the writ petitioner in his reply, dated 4th March 1982, the learned Trial Judge has observed that such specific statements of the said

Respondent No.10 have not been specifically denied by the writ petitioner and the natural consequence would thus be, that he was duly intimated

about the decision taken by the Executive Committee of the said Institute and to the effect that the resignation letters submitted by him were duly

accepted and such resignation would be effective on and from 1st September 1981 and in that view of the matter the submissions of the writ

petitioner that the resignation as submitted. by him was withdrawn before the same because effective, were of no avail or any assistance.

13. While dealing with the second submissions of the writ petitioner as mentioned herein before, the learned Trial Judge has observed that the said

Act has been promulgated or made in order to make provisions for the regulation of the profession of Cost and Works Accountants and Section 3

of the same provides that all persons whose names are entered in the Register at the commencement of the said Act and all persons whose names

may, hereafter, be entered in the Register under the provisions of that Act, are hereby constituted a body corporate by the name of the said

Institute and all those persons shall be known as members of the said Institute. On such, the learned Trial Judge has observed that it is thus quite

clear and evident that the said the said Institute and also for providing for the formation of Various Committees and thus, to run the administration

and management of the same. The learned Trial Judge has also referred to Sections 15 and 16 of the said Act,. the particulars whereof have been

quoted herein before, apart from referring to Section 17 of the same, which provides for formation, of Committees from amongst the members of

the Council and has indicated that one of. such Committees named thereunder is an Executive Committee. Section 17 of the said Act, in, fact, lays

down that (1) the Council shall constitute from amongst its members the following Standing Committees, namely : -

(i) an Executive Committee;

(ii) a Disciplinary Committee; and

(iii) an Examination Committee.

(2) The Council may also form a Training and Educational facilities Committee and such other Committees from amongst its members as it, deems

necessary for the purpose of carrying out the provisions of this Act.

(3) The Executive Committee shall consist of the President, and the Vice-President, ex-officio, and three other members of the Council elected by

the Council.

(4) The Disciplinary Committee shall consist of the president, ex officio, one member to be nominated by the Central Government from amongst.

the members nominated to the Council by that Government and one member to be elected by the Council.

(5) The Examination Committee shall consist of the President or the Vice-President, ex-officio, as the Council may decide, and two other members

of the Council elected by the Council.

(6) Notwithstanding anything contained in this section, any Committee formed under Sub-section (2), may, with the sanction of the Council, co-opt

such other members of the Institute not exceeding two thirds of total membership of the Committee as the Committee thinks fit, and any member

so co-opted shall be entitled to exercise all the rights of a remember of the Committee.

(7) The President shall be the Chairman of every Committee of which he is a member, and in his absence, the Vice-President, if he is a member of

the Committee, shall be the Chairman.

(8) The Standing Committees and other Committees formed under this Section shall exercise such functions and be subject to such condition in the

exercise thereof as may be prescribed and in addition to the above reference has also been made by the learned Trial Judge to Regulation 85(a) of

the said Regulations as quoted herein before and which has been framed u/s 39(4) of the said Act which postulates that..... notwithstanding

anything contained, in Sub-sections (1) and (2), the Central Government may frame the first regulations for the purposes mentioned in this Section,

and such regulations shall be deemed to have been made by the Council; and shall remain in force until they are amended, altered or revoked by

the Council. Regulation 85(a) of the said Regulations, the learned Trial Judge has pointed out, have made provisions for the Executive Committee

for the purpose of maintaining the office of the Council and for that purpose, they may employ, suspend, discharge or re-employ the necessary staff

on such terms and conditions as it may deem fit. It was the learned Trial Judge"s observations that thus those provisions clearly indicate that the

staff of the office are employed by the Executive Committee and their terms and conditions are determined by the Executive Committee and

therefore, according to the learned Trial Judge, the terms and conditions of service of the employee are not determined by any statutory rules or

regulations Act as such, following the well established principles, the employee appointed by the Executive Committee of the said Institute would

not acquire a statutory status. On such findings the learned Trial Judge has further observed that therefore, even if there is a wrongful termination of

the service or a wrongful termination of contract of employment, for that the employees remedy would be by way of damages in a evil action and

not by a petition before this Court, meaning thereby a writ proceedings. It has also been indicated by the learned Trial Judge that in this case there

is nothing to show that by accepting the resignation as submitted by the writ petitioner, there has seen any violation of the provisions of the statute

and/or statutory regulations, because in that case undoubtedly a writ petition would be maintainable against a statutory body. He has also pointed

out that even assuming for agreement"s sake that the impugned order has not been made by the Executive Committee, but the said Committee

referred the matter to the Council and they had made the decision, still then, it cannot be said that the order has wholly illegal or without jurisdiction

because Regulation 85(a) of the said Regulation. which lays down that nothing in this chapter shall affect the power of the Council to review any

decision of the Standing or other Committees, clearly confiace in the Council, inspite of formation of the Standing Committee and other

Committees, the power to review any decision of any standing or other Committees. Such power, in the opinion of the learned Trial Judge,

included also, the power of the Council to make appropriate orders iri regard to any matter when the same is referred to the Council by the

Committee concerned and in that view of the matter, it was observed by the learned Trial Judge that the decision of the Council was neither illegal

nor unwarranted. On such findings as above, the writ petition was dismissed.

14. In this appeal as taken from the said decision, Mr. Sundarananda Paul, submitted amongst others that the impugned order was passed on

surmises about probability of alternative and in that view of the matter, the vital foundation of the said order should be deemed to have been taken

and as such the same should be set aside. Mr. Paul also contended that holding the relationship between the parties to the list was one of

contractual one, without taking into account the actual facts, which established that the writ petitioner was an employee of the statutory body within

the meaning of Section 2(f) of the said Act there was certainly a statutory relationship which could have been established by taking recourse to a

writ proceedings. He further contended that the learned Trial Judge failed to appreciate that the said institute, on the face of the records, was a

statutory body within the meaning of Section 2(f) of the said Act and Section 39(2) (a) confer powers on the Council of the same to provide for

regulations relating to the terms of office, its powers, duties and functions of the employees of the petitioner''s class and those regulations are to be

governed by or in terms of Regulation 85{a) of the said Regulations and thus the terms and conditions as offered by the Executive Committee to

the writ petitioner, acquired the status of the regulations of a statute and no employee could be discharged m the absence of (he provisions as

provided in his concerned letter of appointment. It was also contended by Mr. Paul that the learned Trial Judge erred in holding that the terms and

conditions of service of the writ petitioner were not determined by any statutory regulations and as such, he had not acquired a statutory status and

such observations by the learned. Trial Judge would not withstand the tests of the reasonable scrutiny, because the relationship between the

appellant/petitioner and the said Institute cannot be conceived of, apart from being a creature of the statute and all functions carried on by the

Executive Committee on behalf of the said Institute are regulated in accordance with Section 39 of the said Act arid in consequence with the spirit

of the provisions as contemplated u/s 39 read with Regulation 85 as mentioned above. Mr. Paul further claimed that the learned Trial Judge should

have held that the appellant/petitioner Was entitled to due relief from the Writ Court, as no remedy, in a case of the present nature, lay in civil

action or by way of damages as observed by him and more particularly when the said Institute which is a juristic entity has its existence in terms of

the provisions of Section 2(f) of the said Act. It was also contended by Mr. Paul that in making his determinations on the basis of the relationship,

which according to his, was not purely one of ordinary relationship of master and servant, the Learned Trial Judge was not only wrong, but he

misconstrued and misconceived the provisions of the said Act and the Regulations.

15. In addition to the above, Mr. Paul contended that the learned Trial Judge was wrong and he observed erroneously, that the service relationship

between the writ petitioner and the said Institute stood terminated on the date as alleged as on the face of the record, the appellant/petitioner

withdrew his resignation prior to the expiry of the notice period and in view of the admitted fact of resumption of duties by the appellant/petitioner

after 1st September 1981 and also on the patent fact that the writ petitioner was intimated that the matter was referred to the Council and the

decision "would be taken on the subsequent meeting, there was no justification for the learned Trial Judge to hold or conclude that the relationship

in the instant case had served. Mr. Paul claimed that in any event, the learned Trial Judge should have held that the order as impeached and as

made by the Council was wholly illegal and unauthorised and as such the same could not be given effect to the more so when, the Council had no

power of review in a case of the present nature. Mr. Paul further contended that in view of the provisions in the said Regulations, the learned Trial

Judge ought to have held that. the withdrawal of resignation by the writ petitioner in this case was unilateral and the said Institute''s role ought to

have been positive and they were left with no other alternative but to initiate a proper proceedings in accordance with law to discharge him m terms

of Regulation 85(a) of the said Regulations. It was further indicated by Mr. Paul that the order of acceptance of resignation in this case was,

nothing but an attempt to discharge and/or terminate the appellant, petitioner from the services of the said Institute when he unilaterally withdraw his

resignation before the expiry of the notice period as mutually accepted by the parties and the said termination or discharge was not done in

accordance with law and such action was also repugnant to principles of natural justice and furthermore, the order complained of was based on

profound misconception about the patent line of distinctions between discharge and/or termination and acceptance of resignation. Mr. Paul

contended that the reference of the matter to the Council by the Executive Committee was highly improper, illegal and unauthorised and such being

the position, the decision as taken on the said reference was also improper, void and bad.

16. Mr. Paul also contended that on the basis of. the character and formations of the said Institute in terms of the provisions of the said Act and the

said Regulations, the same was, if not a State, but at least an authority, agency or instrumentality of the same under Article 12 of the Constitution of

India. While, on the point, apart from relying on the other cases of the Supreme Court, Mr. Paul referred the unreported judgment of the Supreme

Court in the case of Central Inland Water Transport Corporation Limited & Anr.-Vs-Brojo Nath Ganguly & Anr. (Civil Appeal No, 4412 of

1085) and the unreported judgment in the case of Central Inland Water Transport Corporation Limited & Anr.-Vs-Tarun Shanti Sengupta & Anr.

(Civil Appeal No. 4413 of 1985), which cases were heard and disposed of analogously by the judgment dated 6th April 1986. Since the

determinations as mentioned above, have not as yet been reported, Mr. Paul made available, copies of them for the use of the Court and also

supplied copies of them to Mr. Banerjee, who opposed this appeal. The points involved in those appeals related to the important questions as to

the position of the Government Companies and their employees including their officers and whether a Government Company as defined in Section

617 of the Companies Act, 1956, is the ""the State"" within the meaning of Article 12 of the Constitution of India and whether an unconsciable term

in a contract of employment. is void u/s 23 of the Indian Contract Act, 1872, as being opposed to public policy and when such a term is contained

in a contract of employment entered into with a Government Company, is also void, as infringing Article 14 of the Constitution of India, in case a

Government Company is. ""the State"" under Article 12 of the Constitution of India. The appellant in those appeals, viz., the Central Inland Water

Transport Corporation Limited, was incorporated on 22nd February 1967 and the majority shares of the same were at all times held by the Union

of India, who were Respondents in the appeals and the remaining shares were held by the State of West Bengal and the State of Assam in the

respective appeals. On the basis of the definition u/s 167 of the Companies Act, 1956, it was indicated that as all the shares of the Corporation

were held by different Governments as mentioned above, the same was not only a Government Company as defined by the said Section 167, but

would be a Company wholly owned by the Central Government and the two State Governments as mentioned above. In the judgment as indicated

above and the Rule which was under consideration, was the Central Inland Water Transport Corporation Limited Services Discipline and Appeal

Rules, 1979, as framed by the Corporation and which were applicable to all the employees in the services of the Corporation in all units in West

Bengal, Bihar, Assam or in other State or Union Territory, except those employees, who were covered by the Standing Orders under the

Industrial Employment (Standing Orders) Act, 1946, or those employees in respect of whom, the Board of Directors has issued separate orders.

Rule 9 of that Rules deals with termination of employment for acts other than disconduct and under Rule 10, an employee is required to retire on

completion of the age of 58 years, though in exceptional cases and in the interest of the Corporation, an extension may be granted with the prior

approval of the Chairman-cum-Managing Director and the Board of Directors. Rule 11 postulates that employees, who wish to leave the

Company''s service, must give the Company the same notice as the Company is required to give them under Rule 9. Rule 83 as mentioned the

provisions for suspension and Rule 87 deals with acts of misconduct, while Rule 38 provides procedure for imposing major penalty and sets out in

detail how a disciplinary enquiry is to be held and special procedure has been laid down in Rule 43 in respect of certain cases.

17. The powers conferred under Rule 9 has net only been found to be arbitrary, but has also been observed to be discriminatory as it enables the

Corporation to discriminate between the employee and employee and can pick up one employee and apply to him clause (i) of Rule 9 and apply

clause (ii) of Rule 9 against another employee. It has also been observed that yet the Corporation can pick up another employee and apply in his

case sub-clause (iv) of clause (b) of Rule 86 read with Rule 38 and further, they can apply Rule 37 in respect of another employee. It has also

been indicated that all that the Corporation can do when the same circumstances exists as would justify them in holding under Rule 38 a regular

disciplinary inquiry into the alleged misconduct of the employee. It has been pointed out that both the employees in the concerned appeals had, in

fact, been asked to submit their explanation to the charges made against "them and one of them informed that a disciplinary inquiry was proposed

to be held in his case although the charges made against both the employees were such, that a disciplinary enquiry could easily have been held but

the same was, however, not held, but instead, Rule 9(i) was resorted to.

18. The Supreme Court has further observed that the Corporation is a large organisation. It has offices in various parts of West Bengal, Bihar and

Assam under the Rules, arid possibly in other States also. The Rules as mentioned above, form part of the contract of employment between the

Corporation or its employees who were not its workmen. These employees had no powerful workmen"s Union to support them. They had no

voice in the framing of the said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There was gross

disparity between the Corporation and its employees, whether they be workmen or officers. The Corporation can afford to dispense with the

services of an officer. It will find hundreds of others to take his place, but an officer cannot afford to lose his job because if he does so, there were

not hundreds of jobs waiting for him. A clause, such as clause (i) of Rule 9 is against right and reason. It is wholly unconscionable. It has been

entered into between parties, between whom there is gross inequality of bargaining of powers.

19. The Supreme Court has further held and found that the Corporation in that ease to be ""a State"" and has also observed that as the Corporation

is ""the State"" within the meaning of Article 12, if it would be amenable to the writ jurisdiction of the High Court under Article 220 and it is now well

established that an instrumentality or agency of the ""State"" being in ""the State"" under Article 12 of the Constitution, is subject to the Constitutional

limitations, and its actions are State action and must be judged in the light of the Fundamental Rights guaranteed by Part III of the Constitution of

India. Such observations have been made on the basic of the determinations as made in the cases of 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, , The International Airport Authority"s case, (1974) 3 S.C.R. 1014 and Ajay Hasia and

Others Vs. Khalid Mujib Sehravardi and Others, . It has also been observed that the actions of an instrumentality or agency of the State must,

therefore, be in conformity with Article 14 of the Constitution of India. The progression of the judicial concept of Article 14 form a prohibition

against discriminatory class legislation to an invalidating factor for any discriminatory or arbitrary State action, has been indicated to have been

traced in Union of India and Another Vs. Tulsiram Patel and Others, and it has further been indicated that the principles of natural justice have now

come to be recognised as being a part of the Constitutional guarantee contained in Article 14 of the Constitution of India. In fact, the observation in

Tulsiram Patel"s case (supra) is to the following effect :

20. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new

and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs

thus violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action,

it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is

not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck

down. The principles of natural justice, however, apply not only to legislation and State action but, also where any tribunal; authority or body of

men, not coming within the definition of ""State"" in Article 12, is charged with the duty of deciding a matter, have been indicated by the Supreme

Court and it has also been indicated that as pointed out earlier, Rule 9(1) of the Rules under consideration, would be both arbitrary and

unreasonable and the same also wholly ignores and sets aside the andi alteram partem rule and the same therefore, violates Article 14 of the

Constitution of India.

21. On the basis of the determinations of the Supreme Court in the unreported cases as mentioned above and also on the basis of their

determinations, there is no doubt that the employees of the large organisations having the attributes of government employees form a separate and

distinct class and the contract or employment or the contract of the employees of ""the State"" cannot be equated with the contract of employment of

small employers, which was involved in case of a lease in the case of Radhakrishna Agarwal Ors vs. State of Bihar & Ors (1977) 3 R.C.R. 249.

22. The above two appeals of the Central Inland Water Transport Corporation Limited and another were taken from the two determinations of

this Court, whereby the impugned order dated 26th February 1983, terminating the services of the employee Respondents was set aside and the

Corporation was directed to reinstate them and to pay all arrears of salaries, on consideration that Rule 9(1) as mentioned above, in its entirety

was ultra vires Article 14 at the Constitution of India. The Supreme Court in the two appeals as indicated above, has upheld the determination of

this Court with the observations that the High Court was, however, not right in declaring sub-rule 1 of Rule 9 ultra vires in its entirety as mentioned

above or in striking down the same being void as a whole on that ground with the further observations that the High Court over-looked the fact

that Rue 9 also confers upon a permanent employee the right to resign from the service of the Corporation, While making such determinations,

apart from the cases as mentioned herein before, the Supreme Court had also considered the cases of S. S. Mulle Vs J. R. D. Tata & Ors.,

(1980) Lab and I.C. II and Manohar P. Kharkhar and another Vs. Raghuraj and another, , which is also commonly known as ""Makalu case"". In

fact, the decision in Mulle''s case (supra) was relied upon by the Respondents before the Supreme Court while the other determinations in

Makalu''s case (supra) was referred to by the appellants before them. Both the cases related to Regulation 48 of the Air India Employee''s Service

Regulations framed by Air India International which is a Corporation established under the Air Corporation Act, 1853 and same is ""the State

within the meaning of Article 12 of the Constitution of India. It has been indicated that under Regulation 48(a) of the Regulations as mentioned

above, the services of a permanent employee can be terminated ""without assigning any reason"" by giving him 30 day''s notice in writing or pay in

lieu of notice. On both the cases, the services of the concerned employees were terminated under that Regulation 48(a) which also provides for

dismissal of an employee, who was found guilty of misconduct in a disciplinary enquiry held according to procedure prescribed in the said

Regulations. It has been pointed out that in Mulle''s case (supra), a learned Single Judge of the Bombay High Court held the concerned Regulation

48(a) to be void as infringing Article 14 of the Constitution of India and that too on the basis and reasons that there was no guidance given

anywhere in the concerned Regulation for the exercise of power conferred by it, that it placed untrammeled power in the hands of the authorities,

that it was an arbitrary power which, was conferred and it did not make any difference that it was to exercise by high ranking officials. In the

Makalu"s case (supra), a contrary view was taken by a Division Bench of the Bombay High Court and the Supreme Court has observed that the

said Bench rightly held that the employee of the statutory Corporation did not enjoy the protection conferred by Article 311(2). In that case it was

however and further held that the phrase ""without assigning any reason"" used in the concerned Regulation 48, only meant a disclosure of the

reasons to the employee concerned, apart from holding that Regulation 48 was not a one sided Regulation, since under Regulation 48 the

employee was also permitted to resign without assigning any reason by giving notice as prescribed therein, In fact, the Division Bench of the

Bombay High Court applied to the said Regulation 48 analogy of the ordinary law of the master and servant, under which no servant can claim any

security of tenure and also argued in the analogy of the right to compulsorily retire an employee, where a provision in that behalf is made in the

service rule. It was further held by the Division Bench of the Bombay High Court that it was difficult to conceive of any authority to, it was ""a

State"" under Article 12 of the Constitution of India and bound by the constitutional guarantees contained in Part-III of the Constitution terminating

the services of its employee without reason or arbitrarily, apart from holding that the existence of relevant reasons was a sina qua non for exercising

the powers under Regulation 48 and further went on to state that because of the complexity of modern administration and the exigencies which

may arise in the course thereof, it is necessary for the employer to be vested with the powers such as those conferred by Regulation 48. The

Supreme Court has pointed out that the said Division Bench took great pains to discern in some of the sections of the Air Corporation Act,

guidelines for the exercise of the power conferred by Regulation 48 and according to them, the choice of Air India International to proceed under

Regulation 48 would has-e to be dictated for the purpose of the needs and exigencies of its administration and if that power was exercised

arbitrarily, the Court would. strike down the action taken under Regulation 48. The views as expressed by the Division Bench were not wholly

accepted by the Supreme Court of India and apart from the factual aspect of the case, they found that every single conclusion reached by that

Bench and the reasons given in support thereof, to be wholly erroneous and it has been observed that the Division Bench over-looked that it was

not dealing with the case of the non-speaking orders but with the validity of a Regulation. It has been observed by the Supreme Court that the

meaning given by the Division Bench of the Bombay High Court, to the expression ""without assigning any reason"", was wrong and untenable and

the Supreme Court has further observed that in the light of their determinations about the principle of public policy evolved, and tested by the

principles which have been indicated, the concerned Regulation 48(a) would never have been sustained. They have in fact, observed that the

Makalu"s ease (supra) was wrongly decided and as such, the same was required to be overruled.

23. The Supreme Court has of course, found in the appeal under consideration that as the definition of ""the State"" in Article 12 is for the purpose

of both Part-III and Part-IV of the Constitution, State actions, including action of the instrumentality and agencies of the States must not only be

unconformity with the fundamental rights guaranteed by Part-III, but must also be in accordance with the Directive Principles of State policy

prescribed by Part-IV. The fundamental rights and the Directive Principles - both are complimentary to each other. It has also been indicated that

Article 39(a) provides that the State shall, in particular, direct its policy towards securing that the citizen, men and women, equally have the right to

adequate means of livelihood"". Article 41 requires the State, within the limits of its economic capacity and development, to make effective

provision for securing the right to work."" An adequate means of livelihood can not be secured to the citizen by taking away without reasons the

means of livelihood. The mode of making ""effective provision for securing the right to work"" cannot and does not mean that giving employment to a

person will involve throwing him out of employment without any reason. The action of an instrumentality or agency of the State, if it frames a

service rule such as Rule 9(1) or Rules analogous thereto, would, therefore, not only be violative of Article 14 but would also have contrary to the

Directive Principles of State policy contained in Article 39(a) and in Article 41 of the Constitution of India.

23A. On the basis of the views as expressed and indicated herein before, the Supreme Court of India has observed that the appeal before them

should fail and as such, they were dismissed and the orders as made by this Court, more modified by substituting for the declaration given, by

observing that Rule 9(1) of the Service, Discipline and Appeals Rules, 1979 of the Central Inland Transport Corporation Limited was void u/s 25

of the Indian Contract Act, 1872 as being opposed to public policy and so also ultra wires Article 14 of the Constitution of India to the extent that

the same confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months notice in writing

or by paying him the equivalent of three months'' basic Pay and Dearness Allowance in lieu of such notice.

24. Section 9 of the said act which is to following effect:

(1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or

under this Act.

(2) The Council shall be composed of -

(a) not more than twelve persons elected by members of the Institute from amongst the fellows of the Institute chosen in such manner and from

such regional constituencies as may be specified in this behalf by the Central Government by notification in the Official Gazette; and

(b) not more than four persons nominated by the Central Government, deals with and lays down the provisions for Constitution of the said Council

and Section 39 deals with power of the said Council to make regulation In fact, Sub-section (1) of Section 39 postulates that the Council may, by

notification in the Gazette of India make regulations for the purpose of carrying out the objects of this Act, and a copy of such regulations shall be

sent to each member of the Institute and Sub-section (2) lays down the matters in particular, where and without prejudice to the generality of the

foregoing power, provisions may be made for exercise of such power. Mr. Paul pointed out and submitted that the said Regulations, were framed

by the Central Government in exercise of the power conferred by Sub-section (3) of Section 39 as quoted herein before and: they were first

notified by Notification No. 10 (13) - Inst./59, dated. 25th May 1959, published in part IV Section 2 Sub-section (i) of the Gazette of India

Extraordinary, dated 25th May 1059 being G.S.R. No. 611 and as such, the said, Regulations according to him had statutory force and the said

Institute is, if not, a State, but at least an Instrumentality or agency of the same under Article 12 of the Constitution of India, To establish that the

said Regulations had the impact as mentioned herein before or the statutory effect as claimed, reference was made my Mr. Paul to the case of AIR

1972 1935 (SC) and then to the case of Jagdish Prasad vs. Union of India & Ors., 77 C.W.N. 379 , in which case the appellant was officiating as

the Harbour Master under the Calcutta Port Commissioners of set up under the Calcutta Port Act, 1890. Under the provisions of the said Act

[Sections 32 (1) and 47], the power, inter alia, of any question, relating to the services of the appellant was admittedly vested in the

Commissioners in meeting. At a meeting of which notice was given to all the Commissioners but which did not include in its agenda the question of

the continuance of the appellant as harbour master and at which 16 out of the 24 Commissioners were present, the question of the appellant''s

continuing as the harbour master (circulated at the meeting as item No. 50) was taken up and a resolution was passed to the effect that the

appellant should be reverted to his substantive part of deputy harbour master. At a meeting of the Commissioners held subsequently the notice of

which did not contain any notice of item No. 50 passed at the previous meeting and at which those Commissioners who were absent at the first

meeting were also absent, the previous resolution was ratified. The appellant made an application under Article 226 of the Constitution which was

rejected and on appeal it was held that the resolution reverting the appellant to his substantive post was not passed in accordance with law and

was illegal and invalid, apart from holding that where the requirement prescribed under any statute is that a particular decision can be taken or a

particular resolution adopted only at a meeting, notice of an item to be discussed must be given to all the persons who are entitled to attend the

meeting. In the absence of such notice the matter cannot be discussed at all unless all the persons entitled to attend are present and they

unanimously agree to consider the matter concerned and that the appellant was entitled to maintain an application under Article 226 as the

contention of the appellant, was that a matter relating to his service had been decided in contravention of Sections 32 and 47 of the Calcutta Port

Act, 1890. Thereafter, a reference was made by Mr. Paul to the case of B.S. Minhas Vs. Indian Statistical Institute and Others, , where a point

arose as a to whether Indian Statistical Institute, a Society registered under the Societies Registration Act, being ""under the control of the

Government of India"", is an instrumentality of the Centra-1 Government and if, would be covered by Article 12 of the Constitution of India and

thus whether, a writ petition under Article 82 against that Institute, for violation of fundamental rights, would be maintainable. It has been observed

by the Supreme Court in that case that the Central Government has deep and pervasive control over the affairs of the Indian Statistical Institute.

Therefore, to all intents and purposes, it is an instrumentality of the Central Government and as such is an ''authority'' within the meaning of Article

12. It is, therefore, subject to the constitutional obligations under Part-III and the writ petition under Article 32 alleging violation of Articles 14 and

16 by the institution in this case is competent and maintainable. After the above ease, Mr. Pual also referred to the case of Union of India (UOI)

Vs. K.P. Joseph and Others, , where a point in issue amongst other was whether mandamus can be issued to enforce a right arising out of

administrative directions and it has been observed by the Supreme Court that. to say that an administrative order can never confer any right would

be too wide a proposition. There are administrative orders which conferred rights and imposed duties. It is because an administrative order can

abridged or take away the rights that Court had imported the principles of natural justice of Andi Alteram Partem into this area. In the case under

consideration another question was whether the provisions in an office memorandum as issued could create an exception to the general rule that

past cases will not be reopened and on construction of the same, apart from considering the other related provisions Supreme Court has observed

that it is no doubt true that past eases, viz., cases of person re-employed prior to 25.11.1958 will not be reopened. That is the general rule. But the

effect of clause 3 of paragraph 3, to create an exception to the general rule in the case of person re-employed before 21.11.3.958 for an

unspecified period or for the period which extends beyond the date of the order and who have exercised their option in writing to be brought under

i.e. order.

24A. It has also been observed by the Supreme Court that another office memorandum providing for certain benefits to ex-military personnel on

re-employment on the basis of their length of actual military service confers a right relating to condition of service and the Court can enforce the

right. Thereafter Mr. Paul referred to the decision in the case of P. Kasilingam Vs. P.S.G. College of Technology, which was the case on Tamil

Nadu Private Colleges (Regulation) Act, 1976 or on interpretation of Section 20 of the same. It would appear that in the case a departmental

proceedings were started against A, a lecturer of a college. He tendered a letter of apology and simultaneously a letter of resignation just when the

proceedings were to commence. The resignation was accepted and it was to be effective from a subsequent date. Within a few days thereafter he

was relieved from service on payment of all dues. A filed an appeal against the order to the state Government u/s 20 alleging that his resignation

was not voluntary. The Government appointed an inquiry officer but rejecting the enquiry report held that the resignation was not voluntary and

ordered his reinstatement. In petition against this order filed by the College, the High Court quashed the order of the Government, and it was held

that the order of the High Court was beyond its jurisdiction under the Article 226, apart from holding that the High Court had transgressed its

jurisdiction under Article 226 of the Constitution by entering upon the merits of the controversy by embarking upon an enquiry into the facts as to

whether or not the letter of resignation submitted by the appellant was voluntary. The question at issue as to whether the resignation was voluntary

as a matter of inference to be drawn from other facts. The question involved was essentially one of the fact. It can not be questioned that the

Government undoubtedly had the jurisdiction to draw its own conclusions upon the material before it. In that case, it was also the obiter of the

Supreme Court that it may be conceded that it is open to a servant to make his resignation operative from a future date and to withdraw such

resignation befog e its acceptance. The principle that the services of a Government servant normally stand terminated from the date on which the

letter of resignation is accepted by the appropriate authority, unless there is any law of statutory rule governing the conditions of service to the

contrary can apply to the case of any other employee. Mr. Paul pointed out that even such obiter of the Supreme Court, it is also binding on High

Court in view of the determinations in the case of Sardar Ajaib Singh, Calcutta Vs. Commissioner of Wealth Tax, W.B., , where a Division Bench

of this Court has observed that obiter of Supreme Court, the legal mentor of the country, is binding on High Courts. Judgment in Pritus Singh Pal-

Vs-Union of India, AIR 1982 SC 143 may also be referred to.

25. On the basis of the decisions in the appeals in the cases of Central Inland Water Transport Corporation Limited & Anr. as indicated herein

before and also the other cases as mentioned above, Mr. Paul claimed and contended that the said Institute was admittedly a statutory body and

as such, being their employee, the writ petitioner had also the right to maintain his writ petition against the said Institute and to claim that their action

was illegal, inoperative, irregular and violative of Article 14 of the Constitution of India. It was also his contentions that the contractual provisions if

any, .can also be challenged in a case of the present nature as the said Institute was, as mentioned herein before, if not a State, but at least an

instrumentality or an agency of the same under Article 12 of the Constitution of India.

26. Section 4 (1) of the said Act lays down that persons mentioned in Sub-section (1) to (V) thereunder, to be entitled to if he is entered in the

register of the said Institute. Section 4(i) says that any person who has an associate or a fellow of the dissolved company (other than an. honorary

associate or honorary fellow thereof immediately before the commencement of the Act, except any such person who is not a permanent resident of

India and is not at such commencement practicing as a Cost Accountant in India and Sub-section (iii) speaks of any person who, at the

commencement of the Act, is engaged in the practice of Cost Accountancy in India and who fulfills such conditions as the Central Government or

the Council may specify in this behalf and Sub-section (iv) contemplates of any person who has passed sued other examinations and completed

such other training within India and he recognised by the Central Government or the Council as being equivalent to the examinations and training

prescribed for members of the Institute; provided that in the case of any person who is not permanently residing in India, the Central Government

or the Council may impose such other conditions as it may deem fit. On the basis of the above, Mr. Paul also wanted to establish that the said

Institute should be deemed to be a State and if not so, an instrumentality or an agency of the same under Article 12 of the Constitution of India.

27. Initially Mr. Banerjee who appeared for the said Institute and its authorities claimed, that the same was not a statutory body and the petitioner

not having a statutory employment, his writ petition was not maintainable. He referred to the communication dated 29th August 1981 from Shri S.

N. Ghosh, the Secretary of the Institute to the petitioner to the effect ""further to this office letter to you No. K/146/6/81, dated 8th June, 1981, I

am directed by the President to inform you that in the light of your letter, dated 24th August, 1981, the matter will be given further consideration by

the Executive Committee on 6th September, 1981 till such time you will be considered to be on leave"" and stated that the terms of that letter would

show and establish a cause for review, which was sought to be made by the Executive Committee of the said Institute. 1t must be noted here that

from another document dated 8th June, 1981 from the said Secretary to the writ petitioner, it would appear that his resignation was accepted by

the Executive Committee with effect from 1st September, 1981 and there is also no doubt that after the other letter, dated 29th August, 1981, the

petitioner was really allowed to discharge his duties and he was paid upto 1st September, 1981 and the said subsequent letter, dated 29th August,

1981, also showed that en though, earlier there was communication about the acceptance of the resignation, but subsequently the same was stated

not to have been accepted and thereafter, on 23rd September 1981, by a communication from the said Secretary of the said Institute the writ

petitioner was informed, further to the office letter, dated 29th August, 1981 that his letter of 24th August 1981 i.e. the letter whereby he withdrew

his resignation from the post of Director of Research of the Institute, was considered by the Executive Committee and the Committee had decided

to refer the matter to the Council of the said Institute for consideration. In fact, the petitioner was also informed that thus a final decision in the

matter in whatsoever manner, would be communicated to him only after the next Council meeting, which was scheduled to be held on 17th

October 1981 and in fact on 19th October 1981 the Secretary concerned of the said Institute informed the petitioner that the Council was unable

to allow him to withdraw his resignation, which was already been accepted with effect 1st September 1981 and as such, he was requested to hand

over the charge of his office to the Secretary concerned and collect from the said Institute whatever amount was due to him.

28. Section 15 of the said Act deals with the functions of the Council and Regulation 85 of the said Regulation lays down the duties to be

performed by the Executive Committee of the said Institute. The respective provisions of the sections and the Regulations as indicated above, have

been quoted herein before. It was Mr. Banerjee''s submissions that even if the said Institute was an Authority, the contract as involved in this case

between the said Institute and the writ petitioner could not be interfered with or enforced by this Court, as the same was in the nature of a private

contract and he further claimed that when the resignation, as in this case was duly accepted, this Court also had no power to interfere. We have

already indicated that Section 15 of the said Act lays down the different functions of the Council of the said Institute. While on the question of the

effect of the resignation or the withdrawal of the same as m this case. Mr. Banerjee referred to the case of Burjor Madan Vs. United India

Insurance Co. and Another, . The plaintiff in that case who was employed as an Assistant General Manager under the defendant Company

tendered his resignation to take effect from 11th January 1977. He applied fear encashment of his earned leave or to be granted earned leave for

128 days from 1st February, 1977. The defendant Company, however, stated that it was not possible for them to grant encashment of the earned

leave but allowed the plaintiff to enjoy earned leave for those days and on an application by the plaintiff allowed him to go on leave for 128 days.

On 9th May, 1977, the plaintiff wrote a letter to the defendant intimating that he would rejoin office on 9th June, 1977 on the expiry of his earned

leave granted. The Company, however, did not agree and wrote on 23rd May, 1977 that the resignation of the plaintiff was accepted. The plaintiff

instituted the present suit for a declaration that he was an employee of he defendant Company and that he was entitled to rejoin the service on the

expiry of his leave. It was contended that the plaintiff was entitled to withdraw and had in fact withdrawn his resignation be ore it became effective

and that his resignation was conditional and on such facts it was held that (i) that the plaintiff having first of all resigned with effect from a particular

date and the defendant having on representation made by him allowed him leave for 128 days which stood to his credit and having accepted his

resignation thereafter, the plaintiff cannot be said to have to a right of withdraw his resignation before 9th June, 1977, (ii) that although technically

the plaintiff was not entitled to leave pay for 128 days, but the Company having been good enough to allow him such pay and he having accepted

the same, the resignation was properly accepted by the Company. He also relied on the determinations in the case of Jai Ram Vs. Union of India

(UOI), , where Supreme Court had occasion voluntary retirement at the age of 55 years and has observed that possible view to take upon the

language of Rule 56(b) (i) of Chapter 9 of Fundamental Rules that a ministerial servant coming within its purview has normally the right to be

retained in service till he reaches the age of 60. This is, conditional undoubtedly upon his continuing to be efficient. If the Government required him

to retire in terms of the Fundamental Rule 56(b) (i), (that is, at the age of 55) it might be argued that he should have been given an opportunity to

show that he was still efficient and able to discharge his duties and consequently could not be retired at the age, apart from holding that the rule

does not preclude ministerial servant from waiving, by express agreement a right to which he might otherwise have been entitled under this rule.

The rule does not contemplate a case where the servant at his own accord repeatedly applies for retirement on his completing 55 years and for

leave preparatory to retirement and his application is ultimately granted and he was given post-retirement leave for a period of about six months

from the date of retirement in terms- of Rule 86, Chapter X of the Fundamental Rules on the ground that he had previously applied from leave

which was at his credit but it was refused on the ground of requirements of public service. When a servant has attained the age of 55 years and for

some reason or other himself confesses his inability to continue in service any longer and seeks permission for retirement, it would be a useless

formality to ask him to show case as to why his service should not be terminated. Section 240(3) of the Government of India Act, 1935 could not

have any possible application in such circumstances and it may be conceded that it is open to a servant, who has expressed a desire to retire from

service and applied to his superior officer to give him the requisite permission to change his mind subsequently and ask for cancellation of the

permission thus obtained; but he can be allowed to do so as long as he continue in service and not after it has terminated. But where the service of

the servant, has ceased, because of his retirement, he cannot be held to continue in his service, though at the time he is on post-retirement leave

granted to him under special circumstances. It is no longer competent to him to apply for joining his duties, even though the post retirement leave

had not then ruin out. Thereafter, Mr. Banerjee relied on the case of Raj Kumar -Vs Union of India, AIR 1959 S.C. 180 , where the effect of

withdrawal of resignation after acceptance of the same by the Government was considered. The petitioner in that case was a member of Indian

Administrative Service, asked the Government relieve him from service. The Government accepted it. But before communication of the order

accepting his resignation reached him, withdraw his offer of resignation and those facts it has been held that he had no locus poenitentiae to so

withdraw his offer of resignation after it was accepted (2) the principle that an order terminating employment is not effective until it is intiminating

employment is not effective until it is intimated to the employee could not apply to the facts of the case, (3) there is no rule framed under Article

309 of the Constitution about whelm the resignation becomes effective, (4) Clauses (c) and (d) contained in the Government of India, Ministry of

Home Affairs Memo, dated 6.5.1958 have no statutory force and (5) it being no order of dismissal, Article 311 of the Constitution was not

attracted. Own the question that the clauses (c) and (d) have no statutory force, the decision of the Supreme Court in B.S. Minhas Vs. Indian

Statistical Institute and Others, relying on Amarjit Sigh, AIR 1975 S.C.C. 984, Sukdev Singh-vs-Bhagatram Sarder (supra) and the Rule

enunciated by Mr. Justice Frankurter in Vitarelli -Vs- Seestton in north-worth. In view of the aforesaid reasons, the administrative instructions even

if not statutory in character are required to be adhered to with scrupulous case.

29. It was also the submissions of Mr. Banerjee that the order, dated 29th August, 1981 as mentioned herein before, not having been challenged in

the petitioner anywhere, but the resolution at the Council of the said Institute as contained in. two letters, dated 17th October, 1981 and 19th

October, 1981 having only been challenged, the Court should not have entertain the writ petition and more particularly when, according to him, the

Council of the said Institute at all material times had and still has the right to adopt the concerned resolution under the provisions of the said Act or

the regulation as framed thereunder.

30. On the facts of the present case and so the pleadings as available, Mr. Banerjee contended that when and if a statutory body or authority

under Article 12 of the Constitution of India like the said Institute, enters into a contractual obligation in respect of employment and such exigencies

and not provided for in the statute, such act or actions cannot and should not be interfered with by a writ proceedings. Then he contended that a

writ of certiorari cannot go in a ease like this to set aside illegality, if any, in case of employment which is governed by the principles of master and

servant. According to him this case was really governed by such principles and not by any statutory contract or authority. He also contended that a

resignation after acceptance as in his case, would not be open for withdrawal. It was Mr. Banerjee"s further contention that the resolution, dated

6th September 1981 of the Executive Committee of the said Institute was valid and the other question would be whether the letter, dated 24th

August, 1981, had revived a relationship between the petitioner and the authorities, meaning thereby the said Institute. The other question that was

posed by Mr. Banerjee was that, the Council of the said Institute in the instant case at all material times had and still has the authority to adopt the

resolution as involved regarding the resignation of the petitioner.

31. In support of his first submissions as indicated above, Mr. Banerjee referred to Section 9, Sub-sections (1) and (2) of Section 15 and Sub-

section (d) of Section 16(1) of the said Act. The earlier two provisions have been quoted herein before end Section 16(1) (d) lays down that for

the efficient performance of duties, the Council may -

(A) .....

(B) .....

(C) .....

(D) fix the salaries fees, allowances and other conditions of service of the Secretary and other employees of the Council;

(E) .....

(2).....

In fact, Section 16(1) (a) speaks of appointment of a Secretary for the said Institute by the Council and the terms and powers so far of the

Secretary and other employees as in Sub-clause (d) have been indicated herein before Mr. Banerjee on construction of the sections as mentioned

above, contended that even if the posts of the said Institute are created by the Council in exercise of their Statutory powers, even then all

resolutions as passed, will not and cannot have statutory force. On the basis of the observations in the case of Workmen of Messrs Binny Ltd. Vs.

Management of Binny Ltd. and Another, , Mr. Banerjee contended that the terms should be liverally construed and in support of his other

submissions, he relied on the case of V.T. Khanzode and Others Vs. Reserve Bank of India and Another, . where the Supreme Court was dealing

with the scope of Section 58(1) (2) (i) of the Reserve Bank of India Act, 1934 and has observed that the Central Board has the power to make

Service Regulations for the employees of the Reserve Bank u/s 58(1) of the Act apart from holding that Section 58(1) confers power on the

Central Board of Directors of the Reserve Bank of make Regulations in order to provide far all matters for which provisions necessary or

convenient for the purpose of giving effect to the provisions of the Act. It is not only convenient but manifestly necessary to provide for the service

conditions of the Bank''s staff in order to give effect to the provisions of the Act. The power to provide for the service conditions of the staff is at

least incidental to the obligation to carry out the purposes for which the Reserve Bank was constituted. The provisions of Sub-section (2) of

Section 58 cannot be taken to be exhaustive of the power of the Central Board to make Regulations. The specific power is only illustrative and

cannot restrict the width of the general power. Theretofore, the ambit of the general power conferred by Sub-section (1) cannot be attenuated by

limiting it to matters specified in Sub-section (2) of Section 58. In that case it has also been observed that so long as still regulations are not framed

u/s 58(1), it is open to the Central Board to issue administrative circulars regulating the services conditions of the staff, in the exercise of power

conferred by Section 7(2) of the Act. The power to frame rules or regulations does not necessarily imply that no action can be taken

administratively in regard to a subject matter on which a rule or regulation can be framed until it is so framed. There is no doubt that a Statutory

Corporation can do only such acts as are authorised by the statute creating it and that the powers of such a Corporation cannot extend beyond

what the statute provides expressly or by necessary implication. If an act is neither expressly nor impliedly authorised by the statute, which creates

the Corporation, it must be taken to be prohibited. This does not, however, mean that the Central Board of Directors of the Reserve Bank is not

competent to issue administrative directions or circulars regulating the conditions of service of the Bank''s Staff and that the Central Board must

frame staff regulation u/s 58(1) only. Section 58(1) is in the nature of an enabling provision under which the Central Board may make regulations in

order to provide for all matters for which it is necessary or convenient to make provision for the purpose of giving effect to the provisions of the

Act. This provision does not justify the argument that staff regulations must be framed under it or not at all. The substance of the matter is that the

Central Board has the power to frame regulations relating to the conditions o service of the Bank''s Staff and it may exercise it either in accordance

with Section 58(1) or by acting appropriately in the exercise of its general pawed of administration and superintendence. Section 7(2) confers upon

the Central Board the Power of general superintendence over the affairs and business of the Bank. The Central Board, therefore, is authorised by

the statute to regulate the service conditions of the Bank Staff by issuing administrative circulars. The provisions of Section 58(1) does not prohibit

the exercise o such power u/s 7(1). 32. Mr. Banerjee, on a reference to Section 39 of the said Act submitted that the same gives the Council of

the said Institute power to make Regulations and Sub-section (1) thereunder deals with general power and Sub-section (2) of the Section 39 deals

with special power. He made a specific reference to Clause (s) of Section 39(2) of the said Act, which deals with the terms of office and the

powers; duties and functions of the Secretary and other employees of the Council; and informed the Court that no Regulation has yet been framed

in terms of the said Clause although Service Rules of the said Institute have been framed in 1983. Since the service rules were framed in 1983, it

was Mr. Banerjee''s specific contentions that they were not binding and applicable on the petitioner as he had resigned in 1981. He then referred

to Section 17 of the said Act, which deals with the formation and the duties of the Council of the said Institute, but has not defined their functions

under the said Act. It was Mr. Banerjee''s categorical submissions that Regulation 85 in Chapter 9 lays down the powers of the Executive

Committee and according to Section 17(3) of the said Act which lays down that the Executive Committee shall consist of President, Vice-

President, ex-officio and three other members of the Council elected by the Council, five members would constitute the Executive Council and the

said Council had, as in this case delegated some powers by Regulation as framed u/s 39 or on the basis of the implications thereof, to them.

Thereafter, reference was made by Mr. Banerjee to Section 16 which deals with Staff, remuneration and allowances and he made specific

reference to Sub-clauses (b) and (d) u/s 16(1). The Provisions as indicated, according to Mr. Banerjee, or the efficient performance of its duties,

empowers the Council is empowered to (a) .....;(b) appoint such other persons and its staff as it deems necessary; (c) fix the salaries,

fees, allowances and other conditions of service of the Secretary and other employees of the Council. (d) ....; (e)

.....; (2) ..... On a reference to the appointment letter of the petitioner or the terms thereof, Mr. Banerjee stated that

the Executive Committee of the said Institute, in this case was the appointing authority. On such submission the real question which comes for

determination is as to how then the Council has reviewed the decision of the Executive Committee if there is no specific power of review.

33. On the above question, Mr. Banerjee''s answer was that the petitioner was appointed by the Executive Committee and not by the Council and

the Council appoint the Secretary and he also pointed out that on the basis of the formation of the Executive Committee u/s 17, there functions

have not been dined but in Chapter IX of the Regulations the powers and functions of the Executive Committee are indicated.

34. The submission of two appointing authorities of the employees of the said Institute as made by Mr. Banerjee, were difficult for us to be

accepted.

35. After referring to the provisions of the Regulation 85 of the said Regulations, Mr. Banerjee also contended that delegation, if any, would not

ipso facto take away the powers of the Council of the said Institute and in support of such submissions, he firstly, referred to the case of G.

Vasantha Pal -Vs- C. K. Ramaswamy & Anr., A.LR. 1978 Mad 342 , where a learned Single Judge of the Madras High Court was considering

the question of jurisdiction of the Governor"s powers under Article 188 of the Constitution of India and has observed that when the Governor in

exercise of his powers under Article 188 of the Constitution appoints some person or persons before whom the members may make and subscribe

their oath/or affirmation he does not thereby abdicate his own power under the Article but the jurisdiction of both is concurrent and the option lies

with the member in Council to choose between the two be ore wham he would like to make the oath/or affirmation, apart from holding that such

conclusion follows both from the construction of the constitutional provisions of Articles 188 and 367 read with Sections 14 to 16 of the General

Clauses Act, 1897 and the general accepted theory that an authority which delegates its power does not divest itself of its powers and can resume

them in full or in part. The mere fact that the Governor is the constitutional head of the State does not make any difference on his question as the

constitution itself envisages the very making and subscribing of the obligation before the Governor and then to the Case of Appeal Committee

Anakapalli Municipality Vs. Commissioner, Anakapalli Municipality and Another, , which .was also a judgment of a learned Single Judge of the

Andra Pradesh High Court, where Section 23 of the Madras District Municipalities Act was considered and on the question as to whether

delegation by Municipal Council of its power to hear tax appears, it has been observed that the Council does not denude itself of those powers

during subsistence of the delegation and lastly, to the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, which case

had considered the validity or otherwise of the prospective withdrawal of resignation by a High Court Judge. In that case, a point arose as to

whether a High Court Judge, who sends to the President, a letter in his own hand, intimating to resign his office with effect from a future date, is

competent to withdraw the same before that date is reached. The appellant No. 2 in that case who was the former Chief Justice of this Court, was

appointed to the High Court of Allahabad as Additional Judge on 7th October 1963 and a permanent Judge on 4th September, 1967. His date of

superannuation would be 1st September 1986. On 7th May, 1977, he sent a letter under his hand and addressed to the President of India, through

a messenger and thereafter on 15th July 1977 he wrote to the President of India another letter revoking and canceling his intention to resign on 1st

August, 1977 as expressed in his letter, dated 7th May, 1977. There was no dispute about the receipt of the said letter of revocation or

withdrawal by the authorities concerned. It would appear that by a separate letter, the appellant No. 2 also cut short his leave and resumed duty as

a Judge of the Allahabad High Court on 16th July 1977 and from 18th July 1977 he commenced sitting in the Court. On 1st August 1977 one Shi

Gopal Chandra Misra, the learned Advocate of that High Court, filed a petition under Article 22 of the Constitution, contending that the

resignation, dated 7th May, 1977 of the concerned appellant, having been duly communicated to the President of India in accordance with the

provisions of Article 217(1), and proviso (a) thereunder o'' the Constitution of India, was final and irrevocable, as a result the said appellant had

ceased to be a Judge of the Allahabad High Court with effect from 7th May, 1977 or at any rate with effect from 1st August, 1977, therefore, his

continuance to function as a Judge from and after 1st August, 1977, was nothing but usurpation of the office of a High Court Judge, which was a

public office. On such facts, the writ petitioner prayed for appropriate writ order or directions in the nature of qua warranto calling upon the said

learned Judge to show under what authority he was entitled to function and work as a Judge of the concerned High Court. The petition came up

for final hearing before a Bench of five learned Judges of the Allahabad High Court, which by majority of three against two allowed the writ

petition and issued the directions as asked for. Against such determinations, two appeals, on certificate granted by the High Court under Article

132 and 133(1) of the Constitution of India were filed before the Supreme Court.

36. On the above facts and; on the question of the prospective resignation or withdrawal thereof and the validity of the same, the Supreme Court

has observed that the general principal regarding resignation is that in the absence of a legal, contractual or constitutional bar, a ''prospective''

resignation can be withdrawn at any time before it becomes effective, and it becomes affective when it operates to terminate the employment of the

office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a

Government servant/or functionary who cannot under the conditions of the Service/or office, by his own unilateral act of tendering resignation, give

up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated when it is accepted by the

competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a

unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, or his own

volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesento the resignation

terminates his office-tenure forthwith, and cannot, therefore, be withdrawn or revoked, thereafter. But, if he by such writing, chooses to resign from

a future date, the act of resigning office is not complete because it does nest terminate his tenure before such date and the Judge can at any time

before the arrival of that prospective date on which it was intended to be effective, with draw it, because the Constitution does not bar such

withdrawal.

37. It was really contended by Mr. Banerjee that the case as involved in this appeal, was not one for review, but really a case of general

supervision either by the said Institute or their Council and according to him, reference of the matters to the Council was done as the case was of

one withdrawal of resignation and not one coming under Regulation 85 as quoted herein before. A point arose as to whether such resolution of the

said Institute or the Council was really ratified or if really the said Institute''s President''s action was actually ratified on the submissions of Mr. Paul,

that the same was not so. In reply to the same, Mr. Banerjee slated that there was no evidence in support of Mr. Paul''s contentions and the

Secretary of the said Institute, who was the signatory of the latters as involved in this case and the particulars whereof have been disclosed herein

before, have not stated about any wrong action of the President of the said Institute. It was also submitted by Mr. Banerjee that none of the

Executive Committee members of the said Institute have also come up to take such plea and a reference to the letter of 29th August, 1981, without

any exception, would also show that the act as involved in this case, was due and competent. Mr. Banerjee further contended that u/s 12(2) of the

said Act, the President of the said Institute shall be the Chief Executive authority of the Council and he acted duly in the matter. It should be noted

that the effect of the submission of Mr. Banerjee, on the basis of the affidavits as filed and so also the record as disclosed, would mean nothing but

castigation of the acts of the President of the said Institute or his acts of actions, by either the Secretary of the same or the members thereof and

that being the position, a further question arose as to whether such castigation would be allowed or was possible. Really such attack would not be

possible in view of the decision of the Supreme Court in the case of State of Assam & Anr., -Vs- Ragbag Rajagopalachari, 1972 S.L.R. 44,

where in the facts of that case, the Supreme Court has observed that an authority cannot attack its own order as Respondent. On the analogy of

such decision, we hold that the present attempt of the Secretary of the said Institute to contend that any action of the President of the same, was

improper and not justified, as not proper. It should also be noted that the letter, dated 6th May, 1981 whereby the Writ petitioner had asked for

liberty to resign from a given date, shows that he was availing of his leave and perhaps with pay, which act may also appear from a reference to the

letters, dated 24th August, 1981 and 29th August, 1981. There is however no doubt rather it is an admitted fact that the writ petitioner was paid

upto 1st September 1981 but he was not paid for five days from 1st September, 1981, i.e., upto 6th September 1981, although he had discharged

his duties, in terms of the direction received by him from the Secretary of the said Institute.

38. Mr. Banerjee made a further reference to the case of Raj Kumar -Vs- Union of India (Supra) and contended that for the purpose of finding

out the elective date of resignation in this case, the observations as made in that case should be looked into and to support those submissions, he

referred to the relevant facts of this case as mentioned and indicated in paragraphs 1 and 2 of the report and contended further that in finding out

the effective date in this case, the learned Trial Judge did not at all or appropriately applied the tests as laid down in that decision. It was further

claimed by Mr. Banerjee that the Secretary of the said Institute in the irritant case did act in terms of or within the scope and ambit of its powers

under Regulation 99 of the said Regulations, which deals with the powers and duties of the Secretary and Mr. Banerjee in fact, made a specific

reference to sub-clause (k) and (t) of Regulation 99, which lays down, subject to the general supervision of the President and the Committee

concerned, the Secretary shall exercise and perform, in addition to the powers and duties specially assigned to him in the Act of this Regulation, the

following powers and duties, viz.

.....

.....

(k) payment of salary and allowances to the members of the staff, granting of leave to them, and sanctioning their increment within the prescribed

scale subject to the approval of the President.

.....

(t) performing such other duties and functions as are incidental and exercising such other powers as may be delegated to him by the Council, a

Committee of the President from time to time. Thereafter, Mr. Banerjee also made reference to the case at Appeal Committee Ankapali

Municipality, represented by its Convenor, V. N. Sagar -Vs- Commissioner, Ankapali Municipality & Anr. (Supra) the relevant findings where

have been indicated herein before and then referred to the Case of G. Vasantha Pal -Vs-G. K. Ramaswamy & Anr. (supra), the other particulars

whereof have been indicated herein before and also to the determinations in the case of Huth -Vs- Clarke (1890) 25 Q.B.D. 391, where it has

been observed that under Schedule 6, Clauses 5 and 6, of the Contagious Diseases (Animals) Act, 1878, a Local Authority may appoint an

Executive Committee which. is to have all the powers of the Local Authority, except rating powers, and the Executive Committee may appoint

Sub-committees and delegate to them all or any of the powers of the Executive Committee with or without restrictions, any may from time to time

revoke or alter any such delegation and, duly appointed, Executive Committee of a country council which, by virtue of the Local Government Act,

1888, is the Local Authority for the purpose of the Contagious Diseases (Animals) acts, made an order delegating to Local Sub-committees its

power under the Contagious Diseases (Animals) Acts and under certain Orders in Council, including the Rabies Order, 1887. Subsequently to

such delegation the Executive Committee, without expressly revoking the delegation, issued certain regulations under the Rabies Order, 1887, as

to the muzzling of the dogs and keeping them under control no regulations under the Rabies Order 1887 had been issued by the Local Sub-

Committee and on such fact it has been held that the delegation was not equivalent to a resignation by the Executive Committee of its own powers,

that the delegated authority was subject to resumption at any time, and that the regulations were therefore valid and then to the case of Manton -

Vs-Brighton Corporation (1951) 2 K.B 393 where it has in which case it has been observed that a standing order of the defendant corporation

provided that Standing Committees were to be appointed annually, in May for the ensuing year to perform such duties as shall be then delegated to

them by the council of the Corporation. In may, 1950, the plaintiff, an alderman of the country brough, was appointed to serve on three Standing

Committees by a resolution of the Council of the Corporation appointing the Committee for ""the period ending with the next annual meeting of the

council"". On December 21, 1950, the Council appointed an ad hoc Committee to inquire into certain alleged conduct of the plaintiff and the

Committee recommended that the plaintiff should no longer serve on any Committee of the Corporation. Their recommendation was on March 29,

1951, adopted at a meeting of the Council, who thereafter treated the plaintiff as having been removed from each of the three Committees on

which he had been previously appointed to serve, and on a summons by the plaintiff for an interlocutory injunction to restrain the Corporation from

interfering with the exercise by he had been appointed until his term of office should expire. It has Hen held that (1) that the words in the Council''s

resolution shall be appointed for the ensuing year provided a limit to the holding of the appointment; they did not mean that he should continue in all

circumstances in that office in the ensuing year, but merely indicated that in normal practice he would do so; and (2) that. the Corporation, as a

delegating authority, could not only at any time resume their won authority, with which they had never in fact parted, but could revoke that authority

even arbitrarily or capriciously; that if there was then power in the Corporation to revoke the authority of a Committee as a whole, there must be

power to revoke that of a single member of it; and that the plaintiff was accordingly not entitled to an injunction.

38A. The above cases were cited by Mr. Banerjee, in support of his contentions that the Council of the said Institute in the instant case, at all

material times had and still has the authority to adopt the resolution in respect of the resignation of the petitioner or acceptance thereof.

39. While elaborating the summissions as to whether the letter, dated 29th August, 1981 has revived the relationship between the said Institute and

the writ petitioner and if the said Institute has authorised by acted in that matter, firstly, reference was made by Mr. Banerjee to the case of

Baradakanta Mishra Vs. High Court of Orissa and Another, . In fact, he made a specific reference to paragraph 25 of the report where it has been

observed amongst others that if the order o the initial authority is void, an order of the appellate authority cannot make it valid. The confirmation by

the Governor cannot have any legal effect because that which is valid can be confirmed not that which is void. In that case the order of the

Governor used the word ""confirm"". The appellant filed appeals to the Government. The appeals were dismissed and it has been observed that the

confirmation by the Governor cannot have any legal effect because that which is valid can bc confirmed and not that which is void. Secondly, Mr.

Banerjee placed reference in the case of State of Punjab Vs. Jagdip Singh and Others, and a specific reference was made by Rim to paragraph of

the report wherein it has been observed that where a Government has no right to a post or to a particular status, though an authority under the

government acting beyond its competence. had purported to give that person a status which it was not entitled to give, he will not in law be

deemed to have been validly appointed to the post or given the particular status. No doubt, the Government has used the expression ""de-

confirming"" in its notification which may be susceptible of the meaning that it purported to undo an act which was, therefore, valid. The expression,

however, must be interpreted in the light of actual facts, which led up to the notification. Those facts clearly show that the so-called confirmation by

the Financial Commissioner of Pepsu was no confirmation at all and was thus invalid. In view of this, the notification of October 31, 1957 could be

interpreted to mean that the Government did not accept the validity of the confirmation of the respondents and other persons who were confirmed

as Tahsildars by the Financial Commissioner, Pepsu. While on the point, a further reference was made by Mr. Banerjee to the determinations in

the case of State of Assam etc. Vs. Kripanath Sarma and Others etc., , on the basis whereon, it can also be deduced that in case there is no

authority in a matter, any directions, if given, the same would be a mullity. We have already indicated earlier that on the basis of the observations in

the Case of State of Assam & Anr -Vs- Raghava Rajagopalachari (supra), the stand as sought to be taken now by the Secretary of the said

Institute had no authority in the instant case and the same cannot be allowed to be agitated or such stand cannot be allowed to be taken by the said

Shri Ghose and we are also of the view that it is very difficult for us to hold that the letter of 29th August 1981 was without jurisdiction as claimed.

40. By his letter of 6th May, 1981, the writ petitioner admittedly offered a conditional resignation which was accepted and such acceptance was

communicated to him on 8th June, 1981. Mr. Banerjee contended that even though the above facts are available from the records of the

proceedings, but in fact, the writ petitioner was subsequently allowed to continue in the service in the manner as indicated herein before, on a fresh

negotiation. It should be noted that no pleading of such facts as mentioned now by Mr. Banerjee was available and it was claimed by him, on the

basis of the determinations in the case of Jai Ram -Vs- Union of India (supra), the relevant particulars whereof have been indicated herein before,

that the writ petitioner in this case was not competent to change his mind and apply for cancellation of his resignation which again was accepted

and it was Mr. Banerjee''s further submissions that the observations in the case of Raj Kumar -Vs- Union of India (supra), would not also

appropriately help the petitioner. We must note and remember that in the letter of 23rd September 1981, the question of re-employment of the

writ petitioner was specifically referred.

41. While on the question of review and the powers of the authority for the same, Mr. Banerjee made a pointed reference to the case of R.R.

Verma and Others Vs. Union of India (UOI) and Others, , where the Supreme Court was considering the validity of Rule 3 of the All India

services (Conditions Service -Residuary Matters) Rules, 1960 and the power to relax certain rules and Regulations in some case under the said

Rule 3 and the Supreme Court had also considered the power of review and has observed that the Central Government is vested with a reserve

power under Rule 3 to deal with unforeseen and unpredictable situations, and to relieve the civil servants from the infliction of undue hardship and

to do justice and equity. It doe not mean that the Central Government is free to do what they like, regardless of right or wrong; nor does it mean

that the Courts are powerless for correct them. The Central Government is bound, to exercise the power in the public interest with a view to

secure civil servants of efficiency and integrity. When and only when undue hardship is caused by the application of the rules, the power to relax is

to be exercised in a just equitable manner but, again, only to the extent necessary for so dealing with the case. The exercise of the power of

relaxation like all other administrative actions affecting rights of parties is subject to judicial review on grounds new well known. Viewed in this light

Rule 3 is not unconstitutional on ground that it vests an unfettered discretion in the Government. Public interest, in the matter of the conditions of

service of civil servants, is best served by Rules, which are directed. towards efficiency and integrity. Now, very wide as the range covered by the

rules is, the rules can never be exhaustive. Unforeseen and complex situations often arise, as will be obvious even from a bare perusal of the cases

reported in the Law Journals arising out of ""service controversies"". Very often it is found that an all too strict application of a rule works out undue

hardship to a civil servant, resulting in injustice and inequity, causing disappointment and frustration to the Civil servant and finally leading to the

defeat of the very objects aimed at by the rules namely efficiency and integrity of civil servants, apart from holding that the principle that the power

to review must be conferred by statute either specifically or by necessary implication is inapplicable to decisions purely of an administrative nature.

To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any Government must be free

to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hide-bound by the rules

and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural

justice where rights of parties may be effected. Here again, it can be emphasised that if administrative decisions are reviewed, the decisions taken

after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. In fact, Mr. Banerjee

shortly contended that under the said Act or the Regulations as frame thereunder and that to the basis of the determinations as above either the said

Institute or the Council of the same bad the authority to review even though the said empower of review has not been indicated definitely. In the

provisions of the statute and the Regulations as mentioned herein before.

42. In reply and while on the question of delegation on the validity or otherwise of the same, Mr. Paul referred to ''Administrative Law'' (4th

Edition) by H.W.R. Wade which has observed that closely akin to delegation, and scarcely distinguishable from it in some cases, is any

arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with

some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions.

The effect then is that the discretion conferred by Parliament, is exercised, at least in part, by the wrong authority, and the resulting decision is ultra

vires and void. So strict are the Courts in applying this principle that they condemn same administrative arrangements which must seen quite natural

and proper to those who make them. In this class might be included the case of the cinema licensing authority which, by requiring films to be

approved by the British Hoard of Film Censors, was held to have surrendered its power of control into unauthorised hands. In fact, on a reference

to the document, dated 19th October, 1981, whereby the Secretary of the said Institute informed the writ petitioner, the Council''s regret to accept

his withdrawal of resignation, was unauthorised, void, improper, irregular and had since they had reference to case of Mohinder Singh Gill & Anr.-

Vs-The Chief no such power in the case. It was also claimed by Mr. Paul on, a Election Commissioner, New Delhi & Ors., 1978 S.C.G. 405 that

it is no longer relevant to consider the distinction between administrative and quasi-judicial functions and the question of hearing on application of

principles of natural justice or the requirement thereof, would very in different facts and situations. It may be that in some cases even a hearing after

the passing of the order may, on facts, satisfy the requirements or natural justice and'' administrative actions are as such subject to natural justice as

judicial and quasi-judicial ones. In, that case it has further been indicated that in cased of judicial review-the necessary action is to be judged by the

reasons as stated while making the order and supplementary reasons in the shape of affidavits must be excluded. On the basis of the above

observations Mr. Paul claimed and contended that the subsequent improvement to the case, as has been sought to be made now by Mr. Banerjee

must not be allowed to be agitated.

43. It was the further ease of Mr. Paul that overall power in the instant case, in the matter of acceptance or non-acceptance of the resignation was

with the said Institute or their. Executive Committee and not the Council and to establish such submissions, reference was made by him to the case

of Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary, , where the Supreme Court, considering Section 68(1) and 105B(1) (a) and

(ii) of the Bombay Municipal Corporation Act, 1888 and if the question of exercise of delegated function was judicial one has observed that the

words of Section 68 must be reasonably construed. It goes without saying that judicial power cannot ordinarily be delegated unless the law

expressly or by clear implication- permits it. But the amendment of Section 65 by Maharashtra Act 14 of 1961 be inclusion of delegation of the

functions of the Commissioner under Sections 105B to 105K does indicate the intention that the judicial or quasi judicial powers contained in

Chapter VIA were expressly intended to be delegated, apart from holding that the provision in Section 68 that the exercise of the function by the

delegate is to be under the ""Commissioner"s control"" and ""subject to his revision"" is really appropriate to a delegation of administrative functions

were the control may be deeper than an judicial matters. In respect of judicial or quasi judicial functions these words cannot of course bear the

meaning which they bear in the delegation of administrative functions and where the Commissioner in his order stated that his functions were

delegated subject to his control and revision, it did not mean that he reserved to himself the right to intervene to impose his own decision upon his

delegate. What those words meant was that the Commissioner could control the-exercise administratively as to the kinds of cases in which the

delegate could take action or the period or time during which the power might be exercised and so on and so forth; In other words, the

administrative side of the delegate"s duties were to be the subject of control and revision but not the essential power to decide whether to take

action or not in a particular case. This is also the intention of Section 68 as interpreted in the context of the several delegatec1 powers. In addition

to the further holding that where under the delegated powers, the delegate passed an ejectment order u/s 1258(1) (a) (ii) the order was the order

of the Commissioner and the control envisaged both in Section 68 and the order of delegation was not control over the decision as such but over

the administrative aspects of the cases and their disposal.

44. The determinations in Central Inland Water Transport Corporation"s appeals have since been reported in Central Inland Water Transport

Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Some of the facts, which we have considered to be relevant have been

indicated herein before and on those facts, the main questions for determinations before the Supreme Court were (i) whether the appellant

Corporation was an instrumentality of the State so as to be covered by Articles 12 and 36 of the Constitution and (ii) whether an unconscionable

term in a contract of employment entered into with the Corporation, was void u/s 23 of the Contract Act and violation of Article 14 and such

whether Rule 9(i), which formed a part of the contract of employment between the Corporation and its employees, to whom the said Rules

applied, was void? In fact, the Supreme Court confirmed the judgments of the High Court with modifications in the declaration made by it and

dismissed the appeals filed by the Corporation with costs.

45. While on the question of instrumentality of the State, the determinations as cited before us in that case and more particularly in those of

Sukhdev Singh-Vs-Bhagatram Sardar Singh Aaghuvanehi (supra) Ramana Dayaram Shetty Vs. International Airport Authority of India and

Others, , Ajay Hasia-Vs-Khalid Majib Sehravanfi (supra), Rai Sahib Ram Jawava Kapur -Vs-State of Punjab (supra), Som Prakash Rekhi-Vs-

Union of India (supra), B. S. Minhas-Vs-Indian Statistical Institute (supra), Mabmhan Singh Jaitla-Vs-Commissioner, Union Territory of

Chandigarh (Supra) and A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , were considered amongst others and on consideration

of them, the Supreme Court has observed that a State must have a relatively permanent legal organisation determining its structure and the relative

empower of its major governing bodies or organs. That is to be found in its Constitution, apart from observing that while Article 308 read with

other provisions of Part XIV of the Constitution show that the word "State" applied to the federating units (other than the State of J & K) which

altogether constitute the Union of India, Article 12 as also Article 36 define the expression "the State", so as to extend its meaning by the use of the

word "includes" in Article 12 to include within it also what otherwise may not have been comprehended by that expression when used in its

ordinary legal sense. The expression "the State" in Article 12 includes - (1) the Government of India, (2) Parliament of India, (3) the Government

of each of the States which constitute the Union of India, (4) the legislature of each of the States which constitute the Union of India, (5) all Local

Authorities within the territory of India, (6) all Local Authority under the control of the Government of India, (7) all other authorities within the

Territory of India, and (8) all other Authorities under the control of the Government of India. In addition to the further observations that the State

being an abstract entity, acts through its agencies or instrumentality. By extending the Executive Power of the Union and of each of the State to the

carrying on of any trade or business, Article 298 does not convert either the Union of India or any of the States, which collectively form the Union

into a merchant buying and selling goods or carrying on either trading or business activity, for the Executive Power of the Union and of the States,

whether in the field of trade or business or in any other field, is always subject to constitutional limitation is and particularly the provisions relating to

Fundamental rights in Part III and exercisable in accordance with and for the furtherance of the directive Principles of State Policy.

46. It has further been observed that the trading and business activities of the State constitute ""Public Enterprise."" The structural forms in which the

government operates in the field of public enterprise are many anal varies. These may consist of government departments, statutory bodies,

statutory corporation, government companies, etc. The immunities and privileges possessed by bodies so set up by the Government under Article

298 are subject to Fundamental Rights and exercisable in accordance with and in furtherance of the Directive Principles of State Policy and for the

purposes of Article 12, Court must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality

or agency of the State. If there is an instrumentality or agency of the State which assumed the grab of a Government company as defined in Section

617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State, apart from holding that applying

the above test to the present case, it is clear that the appellant Corporation is "the State" within the meaning of Article 12. It is nothing but the

Government operating behind a corporate veil, carrying out a Governmental activity and Governmental functions of vital public importance through

the instrumentality of a Government Company. Merely because it has so far not the monopoly of inland water transportation is not sufficient to

divest it of its character of an instrumentality or agency of the state.

47. Dealing with the other question of the effect of unconscionable contract of employment, Clause 9(1) of the Service Discipline and Apple Rules,

1979 of the Central Inland Water Transport Corporation Limited has been held to be void u/s 23 of the Contract Act, 1872, as being opposed to

public policy and is also ultra vires Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the

employment of a permanent employee by giving him three notices or pay in lieu of the notice. such a condition or provision is unconscionable,

unfair, unreasonable and opposed to public policy, apart from holding that an unconscionably bargain or contract is one which is irreconcilable with

what right or reasonable or the terms of which are so unfair and unreasonable that they shock the conscience of the Court.

48. The Supreme Court has further observed that the doctrine of distributive justice is another Juries prudential concept which has affected the law

of contracts, According to this doctrine, distributive fairness had justice in the possession of wealth and property can be achieved not only by

taxation but also by regulatory control of private and contractual transaction even though this might involve some sacrifice of individual liberty. The

doctrine has found constitutional recognition through the Preamble and Articles 38 and 39, apart from holding that the test of reasonableness or

fairness of a clause in a contract where there is inequality of bargaining power is another theory recognised in the sphere of law of contracts. The

courts will riot enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or a clause in a contract entered into

between parties who are not equal. in bargaining power. Lord Diplock in A. Sebroeder Music Publishing Co. case has given the test of fairness

that ""Whether the restrictions are both reasonably necessary for, the protection of the legitimate interests of the promises and commensurates with

the benefits scoured to the promise under the contract. For the purpose of this test all the provisions of the contract. must be taken into

consideration."" This is in conscience with right and reason, intended to secure social and economic justice and conforms to the mandate of the

great equality clause in Article 14. There can be myriad situations which result in unfair and reasonable bargains between parties possessing wholly

disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its

own facts and circumstances. The above principle will apply where the inequality of bargaining power is the result of the great disparity in the

economic strength of the contracting parties or where .the inequality is the result of circumstances, whether of the creation of the parties or not or

where the weaker party is in a position in which he can obtain goods or services or means of, livelihood only upon the terms imposed by the

stronger party or go without them or where a man had no choice, or rather no meaningful choice: but to give his assent to a contract or to sign on

the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract however unfair, unreasonable and unconscionable

a clause is that contract or form or rules may be. The principle, however, will not apply where the bargaining power of the contracting parties is

equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. However,

these are only illustrations as it is difficult to give an exhaustive list of all bargains of this type. In addition to the further observations that the

contracts of the type to which the principle formulated above applies are not contract which are tainted with illegality but are contract which contain

terms which are so unfair and unreasonable that they shock the conscience of the court. In the vast majority of eases such contracts are entered

into by the weaker party under pressure of circumstances, generally economic which results in inequality of bargaining power. Such contracts will

not all within the four corners of the definition of ""undue influence"" given in Section 16(1) of the Contract Act, even though at times they are

between parties one of whom holds a real or apparent authority over the other. Contracts in prescribed or standard forms or which embody a set

of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less

bargaining power or no bargaining power at all. Such contracts which acct a large number of persons or a group or groups of persons, if they are

unconscionable, unfair and unreasonable, are injurious to the public interest. Such a contract or its clause should be adjudged void u/s 23 of the

Contract Act on ground of being opposed to public policy. It should be noted that while making the observations as above, the Supreme Court

has also relied on the decision in the case of Union of India Vs Tulsiram Patel (supra) and so also of Swadeshi Cotton Mills Vs Union of India,

(1981) 1 S.C. 664.

49. Applying the tests as indicated in the Central Inland Water Transport Corporation"s case (supra) or on the cumulative effect of the same and

on due consideration of the relevant provisions of the said Act and the said Regulations has indicated herein before. In our view, there is no other

alternative but to hold, that the learned Trial Judge was not right and justified in not returning a verdict to the effect, that the said Institute is an

instrumentality or an, agency of the State under Article 12 of the Constitution of India and as such, the writ petition was maintainable, for the

infraction of the rights emanating from the provisions of the said Act and the said Regulations as alleged or as involved in the case and the further

particulars whereof have been discussed and indicated earlier. Such being the position, we are also of the view that the learned Trial Judge was not

justified in not making any interference in the concerned writ proceedings and on the challenges as thrown, on the ground that the writ petitioner"s

relationship with the said Institute was purely a relationship of master and servant, viz., a contractual relationship and for breach of such contractual

relationship, the writ jurisdiction of this Court, was not available to him. There is no doubt that the relationship between the writ petitioner and the

said, Institute and his employment was one of contractual relationship and governed by the statutory Rules and Regulations, The terms of

employment or the contract and terms or employment in the stant case, being admittedly an unconscionable and one sided contract of employment,

this case in our view, do also come within the purview of the Supreme Court''s decision in the Central Inland Transport Corporation''s case

(supra).

50. The other point which remains for determination is whether the writ petitioner, who filed the conditional, resignation, had the right to withdraw

the same and if the case of such withdrawal, was duly and appropriately, considered by a proper authority. As it is, we feel that a person holding

such exalted position like a Director of Research of the said Institute like that on the petitioner, must not be hesitant or vacillating in his decisions,

so it was expected, that when once he had expressed his unequivocal desire to resign from a given date, he should have adhered to the same and

should not be heard to say that he withdrew the same subsequently. But, such view, in view of the determinations in the case of Union of India Vs

Gopal Chandra Misra (supra), can no longer be adhered to, even though we feel, that in that case, the Hon''ble Supreme Court of India had not

considered the effect of withdrawal of the, concerned resignation by the concerned learned Judge, before, the same become effective or his

conduct and whether his conduct was hesitant or vacillating? It is true that the learned Judge in that case, before expiry of the date, from which his

resignation could be effective, withdrew his letter of resignation and practically such withdrawal was allowed by the Supreme Court, applying the

terms of proviso (a) to Article 217 (1) of the Constitution of India, under which a learned Judge has an unilateral right or privileges to resign his

office and his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. The

Supreme Court has observed in that case, that since the learned Judges concerned on his right, chose to resign from a future date, the act of

resigning from the office was not complete and so it does not terminate his tenure before such date and the Judge can not any time before the

arrival of that prospective date on which if was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal. We

feel that even inspite of the fact, that there is no bar to such withdrawal, the conduct of a resigning learned Judge, viz., his hesitancy and vacillation

should have been considered. We are also of the view and really we fail to understand that if a learned Judge, who is so hesitant and vacillating is

his own case, how he is expected to do justice in the case of others. However, the law having been laid down in the case as mentioned above, on

application of the said principles, in the facts of this case also, we can hold that since the resignation was withdrawn before the same became

effective, the writ petitioner was within his jurisdiction, authority and competence to have the same withdrawn.

51. There is no provisions embodied in the Rules as regards the right of the employee to resign from service. Similarly, there is no provisions

regarding the acceptance of resignation. The resignation, therefore, was to take effect from a future date. The writ petitioner by his letter dated 6th

May, 1981 changed his decision to effect his resignation in praesento which would be patent from the letter doted 6th May, 1981, whereby he

postponed it to the future elate. So long as the resignation does not become effective, the appellant had a right to withdraw and in fact, he duly and

properly exercised his right. The present case, if tested on the touchstone of the principle laid down in the case of Union of India-Vs-Gopal

Chandra Misra (supra) would show that the general principle as regards resignation is that in absence of a legal contractual or constitutional bar, a

resignation fashioned with prospectivity can be in actuality withdrawn at any point of time before it becomes operative or effective. When it,

operates to terminate the employment of the office of the tenure of the resigner it becomes effective. If in the terms of writing as would appear in

the facts and circumstances of the present case from the letter dated 6th May, 1981 the appellant, by such writing chose to resign from a future

date the act of resigning office was neither final nor complete by reason of the fact it did not constitute termination of his tenure before such date

and he could at any time before the arrival of that prospective date on which it was in actuality to be effective withdrew it. There is nothing either in

the rules or any executive instructions which bars such withdrawal. It is very clear that in a case where the resignation tendered is to become

effective from a future date the employee, who has tendered resignation has the right to withdraw the resignation before it becomes effective and he

goes out of employment. In the letter dated 24th August, 1981, the petitioner in clear terms has stated that he was withdrawing the resignation. In

view of the aforesaid withdrawal, the petitioner was entitled to continue in service. In other wards, the ration of the decision of the Supreme Court

in Union of India-Vs-Gopal Chandra Mishra (supra) is opposite to the present case and not the one in Raj Kumar-Vs-Union of India (supra).

52. "Then comes the question- as to whether the Council had any power to reconsider or review the case. On the facts of this case as indicated

herein before, it is abundantly clear that on receipt of the resignation, the same was kept in abeyance at the dictates of the Executive Committee

and ultimately, the Council of the said Institute had directed the Secretary of the same, to inform the writ petitioner, that they were not in a position

to accept the writ petitioner''s prayer for withdrawal of the resignation. On the basis of the provisions of the said, Act and the Regulations as

framed thereunder, we find that the Council of the said Institute had or has no power to review and since they were lacking in such power, they

could not review the case of the writ petitioner or make any order contrary to the order as earlier made be the Executive Committee of the said

Institute. It is needless to point out that unless the inherent power of review is recognised or conferred by the statute, no authority would have such

power on the basis of the determinations in the case of State of West Bengal v. Indira Debi, (1977) 3 SCC 559 . Thus, when the instant case, the

Council has not been clothed with power of review in case, like this, such power, they could not have exercised under any circumstances or in the

circumstances of this case and more particularly when, they were not the appointing authority of the writ petitioner and his appointing authority was

the Executive Committee of the said Institute. Such being the position and our views, we feel that the submissions of Mr. Banerjee on this point

were of little substance or of any avail. We also feel that the subsequent attempt by the Secretary of the said Institute to attack, challenge or

castigate the decision of the President of the same was not proper and bona fide and in any event the Secretary concerned had no right to

challenge the acts of actions of the President of the said Institute in the facts of this case.

53. For the reasons as indicated herein before, we feel that the appeal should succeed and we order accordingly.

54. The appeal is thus allowed. The judgment and order of the learned Trial Court is set aside. Let appropriate writs be issue 9. The effect of this

determination is virtually to make the Rule, being Civil Rule No.15007 (w) of 1981, absolute. There will be no order as to costs. Stay as prayed

for, is refused.

Mohitosh Majumdar J.- I agree