

**Devaraj Urs and ors. Vs. Mysore State Road Transport Corporation and ors.**

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**Court :** Karnataka

**Decided On :** Sep-09-1970

**Reported in :** (1972)ILLJ59Kant; (1970)2MysLJ496

**Judge :** A. Narayana Pai and ;K. Bhimayya, JJ.

**Acts :** Industrial Employment (Standing Orders) Act, 1946; States Reorganisation Act; [Road Transport Corporation Act, 1950](#) - Sections 3, 14, 14(3), 34, 44, 45 and 45(1)

**Appeal No. :** W.P. Nos. 94, 217, 420, 620 and 643 of 1966

**Appellant :** Devaraj Urs and ors.

**Respondent :** Mysore State Road Transport Corporation and ors.

**Judgement :**

**Per A. Narayana Pai, J.**

1. The petitioner in W.P. 94 of 1966 was recruited as a conductor on 26-2-1962 by the Divisional Controller, Mysore State Road Transport Corporation, Mysore division. In respect of some alleged misconduct or misdemeanour, a disciplinary enquiry was held against him and he was dismissed from service by an order dated 9-10-1964 made by the said Divisional Controller, Mysore division. An appeal against the same by him presented to the General Manager at Bangalore

was dismissed. Thereupon he presented the above W.P. 94 of 1966 to this Court which was disposed of on 16-10-1968. The judgment of this Court is reported at (1968) 2 Mys. L.J. 631. This Court upheld the petitioner's contention that the power of dismissal could be competently exercised only by the Deputy General Manager of the Bangalore division, in view of the express provisions of standing order No. XIII of the standing orders applicable to the Mysore Government Road Transport Department (M.G.R.T.D.). Accordingly, this Court set aside the impugned order of the Divisional Controller as well as the appellate order of the General Manager and further directed that the petitioner will be entitled to all the advantages and benefits flowing from the order of this Court including reinstatement, arrears of pay, increments and the like.

2. The petitioners in the other four petitions are also conductors appointed by the Divisional Controller of the divisions in which they had been respectively recruited. Some of them are of Hassan division, some of Mysore and some of Gulbarga and Bellary divisions. The facts of their cases are also similar, namely, that in disciplinary enquiries held against them, they were dismissed by orders made by the respective Divisional Controllers. Applying the decision in W.P. 94 of 1966 these writ petitions also were allowed and the impugned orders of dismissal quashed. 3. The General Manager of the Mysore State Road Transport Corporation, who was impleaded as respondent 1 in all these cases, preferred against the orders of this Court, appeals to the Supreme Court of India. Before the Supreme Court his counsel raised several contentions which are summarised as follows in the order of the Supreme Court :

'(1) that the standing orders relied upon were not made under the Industrial Employment (Standing Orders) Act, 20 of 1946, and on that account the standing orders had no statutory operation;

(2) that the standing orders, to have any force, must be framed under the Industrial Employment (Standing Orders) Act, 1946 and unless they are so framed, they cannot be given effect to;

(3) even assuming that the standing orders relied upon had statutory operation, the respondents had another remedy which was equally efficacious, viz., to

persuade the State to start proceedings for industrial adjudication, and unless that was done, writ petitions were not maintainable;

(4) the Divisional Controller was competent under standing order 23 to dismiss the respondents, because he held the same rank as the Deputy General Manager;

(5) the Divisional Controller was under the general law of master and servant, competent to dismiss the respondents, he being the appointing authority;

(6) the provisions of the standing orders are not mandatory and as there was a 'proper and full' enquiry, the High Court was not justified in setting aside the orders of dismissal;

(7) in any event, no orders for reinstatement could be directed because the respondents were not civil servants and the only remedy which the respondents had was to claim damages for wrongful termination of employment.'

It would appear that objections were raised on behalf of the respondents that the said contentions had not been pressed before the High Court. The Supreme Court, therefore, held that they were unable to entertain the arguments because an enquiry into several matters, some of fact and others of law, would have to be made on which the High Court had not expressed any opinion. As, however, this Court had not decided these important questions affecting the administration of a public body, the Supreme Court set aside the orders of this Court and remanded these matters back to this Court.

4. After remand, the Personnel Officer of the Mysore State Road Transport Corporation has filed a further or additional affidavit setting out in detail the facts and arguments in support of the several contentions pressed before the Supreme Court which furnished the occasion for the order of remand. Though the matters so pressed before the Supreme Court are set out as seven different points, they reduce themselves actually to three salient questions for consideration, namely,

(1) Are these disciplinary enquiries governed by the standing orders of the Mysore Government Road Transport Department or not

(2) Should this Court decline to exercise jurisdiction under Art. 226 for the reason that the petitioners may be said to have an alternative remedy by way of raising an industrial dispute

(3) Whether in the event of this Court quashing the orders of dismissal, it would be right and proper to make a further direction for reinstatement and consequential reliefs

5. The answer to the first question depends ultimately upon the interpretation and the effect to be given to a resolution adopted by the Mysore Road Transport Corporation on 1-8-1961 on which date it was established by an appropriate notification. The additional affidavit sets out the previous history or a narration of events antecedent to the establishment of the Corporation and the adoption of the resolution of 1-8-61, which, according to the case sought to be made out in the said affidavit, has a bearing upon the meaning or what may be regarded as the real effect of the said resolution. We shall first briefly summarise those events.

6. Before the reorganisation of States under the States Reorganisation Act, the State Government of the erstwhile State of Mysore was conducting on what is described as monopoly basis, certain transport services on specified routes. The conduct and management of the same was being looked after by a department of the State Government called the Mysore Government Road Transport Department. There was being operated within the City of Bangalore and the surrounding areas to a distance of about 10 miles from city limits, a system of transport services by a company called the Bangalore Transport Company. The undertaking and all the assets and liabilities of the said company were taken over by the Government of erstwhile State of Mysore under a statute as from 1-10-1956. There were applicable to the transport system operated by the M.G.R.T.D., a set of standing orders certified under the Industrial Employments Act of 1946. There were similar standing orders similarly certified, applicable to the staff of the Bangalore Transport Company. The taking over of the staff also under the statute of nationalisation was subject to the stipulation that they should continue to retain the benefits of the conditions of service applicable to them while in the service of the company. Either for the said reason or for purposes of facility in administration,

the two units appear to have been maintained more or less as distinct units and popularly referred to as M.G.R.T.D. and B.T.S.

7. On the reorganisation of States brought about on 1-11-1956, two other units of transport services came over to the new State of Mysore. One of them was the transport undertaking of the State Government of the erstwhile State of Hyderabad so far as its operation in the three districts of Hyderabad integrated in the new State of Mysore were concerned. As the said undertaking was a Government undertaking and the staff operating the same servants of the State Government, they came over to the State as the allottees under Part X of the States Reorganisation Act. These Government servants were governed, while serving in the erstwhile State of Hyderabad, so far as discipline and other connected matters are concerned, by the same rules as were applicable to other civil servants of the State.

8. In the erstwhile State of Bombay, there was a Corporation set up under the [Road Transport Corporation Act, 1950](#) (Central Act 64 of 1950). That part of the undertaking belonging to the said Corporation which related to the four districts of the erstwhile State of Bombay which were integrated in the new State of Mysore, had to be dealt with appropriately under the States Reorganisation Act. The appropriate section of the States Reorganisation Act was 109. According to the said section, the Corporation has to continue to function in the transferred areas subject to such directions as may be from time to time issued by the Central Government until other provision is made in respect thereto by law. To deal with the situation, a new section numbered 47A was introduced in the [Road Transport Corporation Act, 1950](#). In accordance with or pursuant to a scheme prepared thereunder by the Central Government, the undertaking of the Bombay State Road Transport Corporation in so far as it related to the four Bombay districts was transferred to the State Government of the new State of Mysore. The relevant notification is numbered 2-T 30/56 dated 31-12-1956. Pursuant to paragraph 10 thereof, every employee of the Bombay Corporation who immediately before 1-11-1956 was working in the Karnataka (meaning the four Bombay districts incorporated in the new State of Mysore) was to be deemed to have been allotted to serve in connection with the affairs of the Government of Mysore. The same

paragraph preserves the power of the State Government of Mysore to determine the conditions of service of persons allotted subject to the proviso that the conditions should not be varied to the disadvantage of any person without the previous approval of the Central Government. The Bombay State Road Transport Corporation also appears to have had a separate set of rules laying down conditions of service and providing for disciplinary enquiries, punishment etc.

9. As a result of these events, the various transport units mentioned above came under the control and management of the Mysore Government Road Transport Department. All the persons serving in those transport systems became servants of the State Government of the new State of Mysore. Here again either in view of differences in details of working or administration or with a view to maintain continuous administration and facility in dealing with different subjects appropriately, the various units appear to have been continued to be operated more or less as different and distinct units.

10. One of the steps in organization, however, appears to have been taken fairly early after the reorganization of States, and that was to constitute what are called divisions for facility of operation. Most of them are territorial divisions. In relation to the territory of the erstwhile State of Mysore as it stood immediately before the reorganisation of States, four divisions called the Mysore division, Bangalore division, Bellary division and Hassan division were constituted. The Hyderabad districts were constituted into Gulbarga division and the Bombay districts into Belgaum division. In addition, in the workshop division there appears to have been two branches, one called the regional workshop division, Hubli, and the other, the regional workshop division, Bangalore. Originally at Bangalore there was an officer at the top of the administration called the General Manager. Subsequently, a post next in rank to him called the Deputy General Manager was created. When the divisions were formed and recognised, the Deputy General Manager became the head of the Bangalore division. For the Bangalore Transport Service, a separate Deputy General Manager was constituted. The other territorial divisions were placed in charge of officers called Divisional Controllers. The regional workshops were put in charge of officers called Works Managers.

11. In March 1960, these heads of regional units and workshop units were declared as appointing authorities for all classes of posts the minimum of the pay scale of which is less than Rs. 100. In May 1960, certain further powers were delegated to the regional heads or unit heads as they are referred to in the relevant papers. In the case of such employees, namely, those whose pay scale was Rs. 100 or less, the following powers were delegated, namely -

(1) the power to appoint or to terminate service;

(2) the power to make temporary departmental promotions; and

(3) the power to grant additional allowances to employees holding one or more posts in addition to his own duties as per rules.

12. The next important event is the constitution or establishment of the Mysore State Road Transport Corporation (M.S.R.T. C.). This was done by notification under S. 3 of the [Road Transport Corporation Act, 1950](#). In the first instance the Corporation was established for the whole of the State of Mysore excluding the area comprised within the limit of the City of Bangalore and the surrounding area within a distance of ten miles beyond city limits. This was by Notification No. H.D. 3(1) R.T.C. 57 dated 25-7-1951. Subsequently by Notification No. H.D. R.T.C. 57 dated 27-5-1961, the Corporation so established was extended to the excepted area also. The idea was to transfer all the activities of road transport services to the statutory Corporation. Necessarily, therefore, further steps had to be taken to transfer effectively to the Corporation not only the assets and liabilities of the transport undertakings but also service personnel. Further, S. 34 of the Act invests the State Government with the special power of issuing general instructions, as well as directions relating to recruitment, conditions of service and training of its employees, wages etc. Such notifications were issued dealing separately with the topic of administrative arrangement and the topic of recruitment, conditions of service, wages etc., of employees. So far as the assets and liabilities are concerned, they could be without any difficulty vested in the Corporation by some notification. In the case of employees, who for reasons already described had all become servants of the State Government of Mysore, separate steps were taken first by terminating their services under the Government by means of abolishing

the posts held by them and secondly by giving them an option to join the service of the new Corporation with simultaneous instructions to the Corporation to take them over and continue to extend to them same conditions of service as under the Government without interruption in service so far as seniority is concerned and by imposing the condition that the Corporation shall not vary conditions of service adversely to them without the approval of the Government.

13. Under these notifications, in respect of pending disciplinary proceedings, the Corporation or an officer designated by it was constituted the disciplinary authority competent to continue and dispose of the same. For the further, it was provided that the Government servants employed by the Corporation may be subjected to such regulations as may be made by the Government under S. 45(ii)(c) of the Road Transport Corporation Act.

14. The section of the Act referred to above deals with the power of the Corporation to make regulations in respect of the conditions of appointment and service and the scale of pay of officers and servants other than certain specified posts in respect of which the power to prescribe conditions of service is given to the Government under S. 44 of the Act. But the substantive power of the Corporation in that regard is found in S. 14 of the Act, which, among other things, states that the conditions of appointment and service and scales of pay of officers and servants of the Corporation shall, as respects officers and servants other than those directly appointed by the Government, be such as may subject to S. 34 be determined by regulations made under the Act.

15. The Corporation, as we have already stated, was established on 1-8-1961. On the men in service in various transport units ceasing to be servants of the Government, their further rights were limited to such as were preserved by assurances given by the Government and directions under S. 34 intended to give effect to the said assurances. When they became the servants of the Corporation by taking employment thereunder, their conditions of service and other matters relating to their service, had to be regulated by Corporation. It is in that context that on 1-8-1961 the Corporation came to adopt the following resolution to which we have made a reference :-

The item on the agenda was :

'Sl. No. 3(ii). Continuance of the rules, regulations, procedure and conventions as they existed on the eve of the formation of the Corporation.

The Resolution No. 8 passed under that subject was :

In view of the fact that considerable time and attention would be required to scrutinise the various rules, regulations procedures, precedents and conventions, it is hereby resolved that all rules, regulations, procedures and conventions as in force as on 31-7-1961 in the Mysore Government Road Transport Department be continued by the Corporation until further orders.'

16. Before considering the arguments addressed by Mr. Krishna Rao for the Mysore State Road Transport Corporation as to the exact effect to be given to this resolution, it is worthwhile referring to some statement about the same contained in the additional affidavit of the Personnel Officer.

17. Immediately after quoting this resolution in paragraph 6 of the additional affidavit, it is stated :

'The effect of this resolution is that the rules and regulations with regard to disciplinary matters which were in force on 31-7-1961, were to continue to be in force thereafter until further orders.'

18. The further statement in paragraph 7 is :

'I submit that the question that arises for consideration is whether the certified standing orders of the M.G.R.T.D. as applicable to Bangalore division would be applicable to all units taken over. In the M.G.R.T.D. in respect of two different division, the Bangalore division and the B.T.S., there were two different certified standing orders. It is not possible to say that any one set of certified standing orders was applicable to the M.G.R.T.D., in all its activities. In 1959, a separate division known as workshop division was formed under the immediate control of the Works Manager. No separate certified standing orders were framed in respect of that division. But certified standing orders in respect of Bangalore division were

made applicable to that division.'

What follows from this is that out of various units of transport service which came to be controlled and managed by the M.G.R.T.D. only two units had certified standing orders, namely the old M.G.R.T.D. and the B.T.S., and when occasion arose for finding a set of rules to be applied to a new division when formed the Government department applied to the department, namely the works department, the standing orders of the Bangalore division at a time when they had the choice and the discretion and long before the Corporation was set up.

19. Then in para 9 of the affidavit it is stated :

'Expect for the Bangalore division and the B.T.S. division there was no certified standing orders for the other divisions. The old rules were continued in respect of the employees by the M.G.R.T.D. The Government passed orders making the unit heads as appointing authorities as well as disciplinary authorities. But in making certain appointments, as there were no new rules, the appointees in Mysore division were told that they were governed by the M.G.R.T.D. rules.'

In this paragraph, the first statement is one of interpretation of the notification of delegation. The second statement is a statement of fact. When the affidavit states that the Government passed orders making the unit heads as the appointing authorities as well as disciplinary authorities, the reference undoubtedly is to the order of delegation made in May, 1960 to which we have already made a reference. The said order delegated to the unit heads three specified powers. None of them can answer the description of a disciplinary power. The first item as we have already stated is the power of appointment or termination. The second is temporary promotion, and the third is the power to pay what is called charge allowance when a person occupying a post is asked to do the additional duties of another post. And what is more, this is limited to people drawing a minimum salary of Rs. 100 and less. All these circumstances go to show that the delegation was of a limited character in respect of specified subjects and is not capable of being described as a general power or delegation of a general power of control. To describe it as disciplinary power is quite inaccurate unless it can be supported by other acceptable legal arguments.

20. This takes us to the steps in the arguments addressed by Mr. Krishna Rao. According to him, when the Corporation was formed and all employees of the State Government ceased to be such Government servants and the Government transport units themselves came to be wound up, there was no longer any separate M.G.R.T.D. unit or a B.T.S. unit controlled or governed by separate certified standing orders. Mr. Krishna Rao's interpretation of the legal consequences of the said situation is that the standing orders of both M.G.R.T.D. and B.T.S. ceased to have any further statutory force. Therefore, according to him, the power of regulating the conditions of service and discipline of all servants of the Corporation except three specified senior officers is that of the Corporation conferred upon it by S. 14(3)(b). The procedure for exercising that power is the making of regulations under S. 45(1) on the topic separately specified in clause (c) of sub-s. (2). In the absence of any such statutory regulations, the argument continues, the matter is at large and is governed by the general principles of the normal law of master and servant.

21. In such a situation. Mr. Krishna Rao contends the resolution of 1-8-1961 must be read as an act by the Corporation adopting a certain set of rules and applying the same until regular rules or regulations are framed in exercise of the statutory powers under Ss. 14 and 45 of the Road Transport Corporation Act. These rules or rules so adopted cannot be regarded as statutory rules but are transitory tentative directions given by the Corporation as the master for the purpose of regulating the conduct of its servants. They would be, according to him, at the highest, matters of contract.

22. Interpreting the resolution, he suggests that the expression 'Mysore Government Road Transport Department' in the said resolution should not be read as the old M.G.R.T.D. but the department by the same name which was on 31-7-1961 controlling or managing the affairs of all the units. So read, the resolution would mean that what was continued or kept in force or applied was not any one particular set of rules but all the rules then prevalent and applied by the said Government department. If so, it would mean that the one and only intention or the clear intention of the resolution was to maintain the status quo until uniform set of rules is promulgated in due and proper exercise of the power under Ss. 14 and 45

of the Road Transport Corporation Act.

23. That the standing orders of B.T.S. and M.G.R.T.D. ceased to be operative as such or of their own force at the end of 31-7-1961 may be conceded in the same way as the service conditions in the other units also died a similar death. But all this is subject to the principles of integration coming down from the date of integration and the States Reorganisation Act and the steps taken by the Government in connection with the establishment of the Corporation and the directions given by the Government under S. 34 of the Road Transport Corporation Act. Although the pre-existing rules ceased to be applicable of their own force and they had to be replaced by rules to be made by the Corporation, the power of the Corporation was controlled by the stipulation that those rules shall not be to the disadvantage of the employees, nor can they be varied to their disadvantage without the previous approval of the State Government. In that situation, the Corporation was bound to make regulations. When the Corporation is one and all the employees working in connection with the different units became the employees of the one master, the Corporation, the normal legal obligation of the master is to formulate or bring about a uniform code of conduct for its entire establishment. It was this obligation that the Corporation was trying to discharge while passing the resolution. The text of the agenda clearly contained a suggestion that the existing rules may be continued until a new set of rules is promulgated. If the suggestion had been accepted in toto, the language of the resolution would have been and should have been quite different from what it is. It was perfectly easy to indicate the idea by saying the rules existing in the various units shall continue subject to the same operation as before until one uniform set of rules are framed for the entire Corporation. But that is not what the resolution says. It actually says that because it will take a long time to make a study of the various rules before formulating what may be regarded as an ideal set of uniform rules, one set of rules in the Mysore Government Road Transport Department be continued. That there was several sets of rules but that only one was intended to be continued is further clear from the fact that the reference to the former in the earlier part of the resolution is 'various rules, regulations, procedures etc.', while what is resolved to be continued is 'all rules, regulations, procedures etc., in force on 31-7-1961 in the M.G.R.T.D.' The difference in language is so clear that it

cannot be ignored. The first one by using the expression 'various' undoubtedly calls attention to the fact that there are differences between rules and rules or between one set of rules and another set of rules, and the second discloses an intention to have for the time being one clear set of rules until a study is made of the various rules and the best among them selected and formulated into a new set of uniform rules.

24. Prima facie, therefore, upon the language it is impossible to come to any conclusion other than that what was sought to be continued and applied was set of rules in force on 31-7-1961 in the M.G.R.T.D., i.e., the old M.G.R.T.D.

25. That such was also the understanding of the Corporation and its principle officer is also clear from the extract of the additional affidavit which we have already given. Prior to the establishment of the Corporation when a new division called the works department was formed for which rules had to be framed, the M.G.R.T.D. standing orders were applied. After the establishment of the Corporation when new appointments were made in the divisions other than the old Bangalore division, which were not governed by any standing orders, the appointees were told that they would be governed by the M.G.R.T.D. rules. One of the orders of appointments has been shown to us in which this idea is expressed in the following text :

'The appointment is purely temporary and on probation for a period of one year. Their services are terminable in case their work is not satisfactory during the period of probation. Their service conditions will be governed by the M.G.R.T.D. standing orders read with work service rules.'

From the admitted fact that the M.G.R.T.D. which had a certified set of standing orders was the old M.G.R.T.D. and not the department as on 31-7-1961 which was managing several units, it is perfectly clear that when this order uses the expression 'M.G.R.T.D. standing orders', it means nothing other than the standing orders which were applicable to the old M.G.R.T.D.

26. There is, however, another alternative argument of Mr. Krishna Rao which should now be considered. According to him, the delegation of the power of

appointment and termination is in itself sufficient to carry with it a power to dismiss for misconduct. The normal rule undoubtedly is that in the absence of any other provision restricting or controlling that power, a power of appointment carries with it the power of dismissal. The question in this case, therefore, is whether what was delegated in May, 1960 was such a general power of appointment without restrictions or a limited power. On a reading of the terms of the order of delegation, we have already indicated that the prima facie effect thereof is of a limited delegation of specified powers. The expression 'termination' may no doubt in ordinary parlance be given the widest meaning of termination including one for misconduct. But in the light of the rules and the practice prevalent, the said word has come to be restricted to contractual termination unconnected with any idea of punishment for misconduct. The standing orders make clear the distinction between termination of the first character on the one hand and removal or dismissal for misconduct on the other. The former is dealt with separately in Standing Order No. XI and the latter in the succeeding standing orders relating to punishment. We are, therefore, satisfied that the expression 'termination' contained in the order of delegation is used in the limited sense of simple contractual termination and not termination by way of removal or dismissal as penalty or punishment for misconduct. That such was the intention of the delegation order is also clear from the fact that other powers delegated are equally limited. The power of promotion is limited to temporary departmental promotion. The order financial power is limited to sanctioning payment of charge allowance and nothing more.

27. For all these reasons, we are clearly of the opinion that so far as these disciplinary enquiries are concerned the rules that govern are the rules contained in the standing orders of the old M.G.R.T.D.

28. The XIII Standing Order which is of direct relevance reads as follows :-

'No order of fine, suspension, discharge or dismissal shall be executed unless so ordered by the Deputy General Manager, Bangalore division. The Deputy General Manager may order such enquiry as he thinks fit before passing orders provided that in case where punishment or dismissal is involved the Deputy General

Manager shall hold an independent inquiry and pass orders.'

This is the standing order as it stood amended in 1958. Prior thereto the officer empowered was the General Manager. By that time, as already stated, all these various units had come under the control of the State Government. The preliminary distribution of work by territorial divisions had already been thought of and more or less given effect to. It is in that context, which the existence of Divisional Controllers well within the knowledge of the authorities, that this amendment is carried out, according to which the Deputy General Manager of Bangalore division is invested with the disciplinary power which till then was vested in the General Manager. The General Manager at that time became the head of the entire organisation not merely the Bangalore division, and an amendment of clause (3) of Standing Order XII substituted the following new clause.

'The quantum of punishment shall be decided by the Deputy General Manager, Bangalore Division, Bangalore according to circumstances of each case and an appeal against this order shall lie to the General Manager.

29. The idea of carrying out this amendment is perfectly clear, namely, that whereas subsidiary or non-essential matters or less important matters in the matter of management of staff may be delegated to the Divisional Controllers, the important and effective power of discipline by making an order of dismissal should be exercised at the central office by one of the several officers selected with a direct grant of appeal to the General Manager also functioning at the central office. Such an idea is certainly not inconsistent with the distribution of power among the various departmental heads or heads of different units.

30. If the subsequent resolution and the specific mention of M.G.R.T.D. standing orders in the case of subsequent appointments are understood against this background, it leaves no room for doubt that at the time the resolution of 1-8-1961 was adopted the considered opinion of the Corporation was that until uniform rules are formulated and promulgated the best interim arrangement was to apply the tried and tested standing orders of the Bangalore M.G.R.T.D. to the entire Corporation.

31. This reinforces our previous opinion that the present disciplinary enquiries are clearly governed and controlled by Standing Order XIII. If that standing order is applied as it has to be, it follows that the Divisional Controller who made the orders of dismissal impugned in these writ petitions, was not competent to make those orders. The said orders are, therefore, liable to be quashed.

32. The second contention need not be gone into in detail because the existence of an attractive remedy even if it is clearly made out, is no bar to the exercise of the jurisdiction under Art. 226. It merely controls the exercise of discretion, and when a statutory body exercises or gets exercised through any of its officers a power which is in contravention of the statute, rules and regulations under the statute, the proper exercise of discretion is to quash the illegality and not remit the party to other remedies which may delay the grant of relief.

33. The third contention is covered by the ruling of the Supreme Court in U. P. State Warehousing Corporation, Lucknow v. Chandra Kiran Tyagi, : (1970)ILLJ32SC , in which it has been held :

'That no declaration to enforce a contract of personal service will be normally granted and that the only well-recognized exceptions thereto are (1) where a public servant is dismissed from service in contravention of Art. 311(2) of the Constitution, (2) where the case is governed by industrial law, and (3) where a statutory body has acted in breach of a mandatory obligation imposed by the statute.'

34. These cases do not come under any one of these exceptions. Hence while quashing the order, the proper thing to do is to leave the parties to work out their remedies in the light of this order.

35. In each of these writ petitions, therefore, we issue a writ quashing the order made by the Divisional Controller dismissing the petitioner from service and leaving the parties to work out their rights in the light of this order in accordance with law. No separate order quashing the appellate order of the General Manager is necessary because the order of dismissal quashed by us is so quashed irrespective of whether it has been confirmed or varied by the appellate order.

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