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**Mohinder Singh Vs. Union of India**

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**Court** : Delhi

**Decided On :** May-15-1968

**Reported in** : AIR1969Delhi170; 4(1969)DLT595

**Judge** : Jagjit Singh and; S.N. Shankar, JJ.

**Acts** : Constitution of India - Articles 12, 13, 13(3), 46, 226, 227, 311 and 311(2); Societies Registration Act, 1860 - Sections 2; School Rules - Rules 10 and 11; Civil Service Regulation - Schedule - Articles 426, 474, 474A and 474AAA; Indian Railway Establishment Code - Rules 148(3) and 149(3); Co-operative Societies Act, 1912

**Appeal No.** : Civil Writ No. 73

**Appellant** : Mohinder Singh

**Respondent** : Union of India

**Advocate for Def.** : D.A. Awasthy and ; M.R. Gupta, Advs.

**Advocate for Pet/Ap.** : H.S. Doabia, Adv

**Judgement** :

**Jagjit Singh, J.**

1. The Lawrence School, Sanawar (Simla Hills), called the School, is an educational institution which is being run by a Society, registered under the Societies Registration Act, 1860. The name of that Society is the Lawrence School (Sanawar) Society (hereinafter referred to as 'the Society').

2. Shri Mohinder Singh, the petitioner in this case, was serving the School as Quartermaster. By a letter dated March 20, 1967 (No. E2/514) the Headmaster of the School gave him three months' notice for termination of his services under rule 10 (ix) of the School Rules. The petitioner was informed that after the expiry of the notice period, on the afternoon of June 19, 1967, he will be permitted to avail of the earned leave that was at his credit. Some instructions were as well given to him for handing over the charge of his duties.

3. The petitioner requested the Head- master through a letter dated March 25, 1967 that he wanted to file an appeal to the Board of Governors of the Society (hereafter called 'the Board') and that pending decision of the appeal action on the notice given to him may be deferred. On March 27, 1967 the Headmaster replied to him that as no action had been taken against him under rule 11, relating to penalties, the question of appeal did nto arise and moreover his services were being terminated with the approval of the Board. A further communication was addressed by the petitioner to the Headmaster, but he was directed to hand over charge without 'further delay or quibble.'

4. Being aggrieved by the termination of his services the petitioner filed a petition, under Articles 226 and 227 of the Constitution, for issuance of a writ of certiorari or such other writ or direction as may be deemed appropriate for quashing the Headmaster's order dated March 20. 1967.

5. So that the contentions raised by the petitioner may be appreciated it is necessary to state certain facts leading to the termination of his services,

6. Originally the School was owned, controlled and managed by the Government of India (hereafter called 'the Government'). Prior to the year 1949 it was under the control of the Ministry of defense. In that year the control was transferred to the Ministry of Education.

7. On June 26, 1952, the Government in the Ministry of Education passed a resolution for carrying on the administration of the School through a Society to be formed under the Societies Registration Act, 1860 (to be hereafter referred to as 'the Act'). The Memorandum of Association and the Rules and Regulations of the Society were to be approved by the Government before being filed with the Registrar of the Joint Stock Companies. On the registration of the Society the administration of the School was to vest in the Society.

8. With the approval of the Government the Memorandum of Association and Regulations of the Society were filed with the Registrar of the Joint Stock Companies. The Regulations (Annexure R/C) provide that Secretaries to the Government in the Ministries of Education, Finance and defense are to be the ex-officio members of the Society and in addition to them four members are to be nominated by the Government. The management of the affairs of the Society is entrusted to the Board. Regulation 4 provides for the composition of the Board as under:

'(1) Three representatives of the Government of India, of whom one shall be from the Ministry of Education and Scientific Research and shall be the Chairman, one shall be from the Ministry of Finance and shall be the treasurer of the School and one shall be from the Ministry of defense.

(2) Four members nominated by the Government of India.' The names of the first members of the Board were, however, mentioned in the Memorandum of Association, but subsequently the Board was constituted in terms of regulation 4, as quoted above.

9. On December 22, 1952 the Government addressed a communication (Annexure A), no. F 19-105/52 G. I., to the Secretary of the Board on the subject of the conditions of service of the members of the staff of the School consequent to the setting up of the autonomous Board. It was intimated that the employees of the School shall cease to be Government servants with effect from the afternoon of December 31, 1952 and shall become employees of the Board, as from January 1, 1953, provided they agreed to serve the Board and the latter agreed to continue them in service. Regarding the permanent employees the following provision was

made:

'Permanent Employees: (a) The permanent staff will be treated as discharged from Government service under the provisions of Article 426 of the Civil Service Regulations, and will be granted compensation pension or gratuity, as the case may be, as provided in Articles 474, 474A or 474AA of these Regulations. Such of them as are willing to continue in the service of the School and are retained in service by the Board of Governors of the Society will continue without a break in their service, and will be admitted to such benefits like the Contributory Provident Fund as the Board may decide to make available to their employees.

(b) Those permanent employees who are nto willing to be employed in the School under the Board or are nto retained in service by the Board will retire after getting whatever benefits they may be entitled to under Articles 474, 474A or 474AA of the Civil Service Regulations.'

10. The movable and the immovable properties of the School were as well transferred to the Board with effect from June 18, 1954. Letter No. F. 19-51/53-H 3, dated 18-6-1954, issued under signature of Under Secretary to the Government, Ministry of Education, provided that the President had been pleased to transfer to the Board, free of cost, the movable and the immovable properties of the School, as these existed on 1-10-1952. The value of those properties was estimated to be a little more than rupees twenty-five lakhs.

11. So far as the petitioner is concerned he had started service as a Clerk. On February 16, 1937 he joined the Indian Army Corps of Clerks and was posted in the School. For some period he also served in the Middle East but was re-posted to the School, as a Clerk, on April, 9, 1943. Subsequently he was promoted as a Cashier and then as Assist-ant-in-charge. On September 16, 1949 he became Assistant Secretary (Quartermaster) and on November 22, 1950 was further promoted as Secretary (Bursar), He was confirmed as Bursar on September 16, 1951. He was occupying that position, in the grade of Rs. 160-10-300, up to December 31, 1952, the date on which the employees of the School were ordered to cease being Government servants.

12. In terms of the letter of the Government dated December 22, 1952, the petitioner accepted the compensation pension in lieu of his past services. The Board having agreed to continue him in service he was, from the beginning of the year 1953, appointed as temporary Accountant, at Rs. 190/- per month. On April 11, 1953 he was appointed Quartermaster on probation and with effect from December 18, 1953 was confirmed on that post by the Board.

13. Here it may also be stated that the Board had divided the School staff into three groups. Group A consisted of persons who could be immediately taken in the service of the Society. Group B comprised of those who could be taken provisionally subject to final review of their cases later on with regard to their suitability. Group C contained the names of those members of the staff whose services were nto acceptable to the Society. The petitioner was placed in Group B and was, thereforee, taken in the first instance as temporary Accountant with effect from January 1, 1953. Ultimately he was confirmed as Quartermaster on December 18, 1953.

14. With the administration of the School passing on to the Board the post of Bursar was upgraded from the pay scale of Rs. 160-10-300 to Rs. 350-760. The petitioner was nto considered to have the requisite qualifications for the post of Bursar and the Board wanted to have 'a really first class man for the post.' For some time during, the year 1961 to 1963 he was, however, required to officiate as Bursar. He was relieved of those duties on January 31, 1963 when the Headmaster of the School took over the work of Bursar in addition to his other duties. Mr. F. B. Manley, on his appointment as Bursar, joined on July 15, 1963.

15. According to the respondents- the joining of Mr. Manley as Bursar was nto liked by the petitioner as he was coveting that post for himself. He nto only felt frustrated but became disgruntled. He earned bad reports during the years 1964 and 1965. His behavior was also considered to have deteriorated. It was, thereforee, decided to take action against him under rule 10 (ix) of the School Rules (Annexure R/E) which gave power to the Headmaster to terminate the services of any permanent member of the staff on the ground of continued unsatisfactory performance of duties by giving him three months' notice in writing

with the previous approval of the Board. A fact finding Committee was appointed and on the basis of the material collected by it, the Headmaster recommended to the Board that the services of the petitioner should be terminated. The Board in its meeting held on February 10, 1967 approved the recommendations of the Headmaster. In pursuance of that decision of the Board, the petitioner's services were terminated by the Headmaster after giving him three months' notice.

16. The pleas taken in the petition were mainly as follows:

(i) The petitioner did nto cease to be a Government servant in spite of issue of letter dated December 22, 1952 by the Government;

(ii) The petitioner being a confirmed Government servant his services could nto be terminated or his post abolished because 'Article 311 of the Constitution of India does nto warrant such a decision.';

(iii) The Board or the Society could nto be regarded as master of the petitioner as their position was that of agents of the Government;

(iv) The petitioner had a brilliant record of service of 29 years and the various Headmasters and Bursars, under whom he served, testified in the highest terms about his experience, efficiency, conduct, ability and indispensability;

(v) Mr. Manley, the present Bursar, started taking various kinds of private services from the petitioner but turned against him when he was nto able to oblige the former and influenced the Headmaster, Major R. Som Dutt, against him;

(vi) The appointment of a fact finding Committee was made by the Headmaster wrongfully and contrary to the School Rules to create charges against the petitioner;

(vii) In spite of the petitioner being informed by the Headmaster through a letter dated October 24, 1966 (Annexure F) that in the event of any charges being framed against him ample opportunity for defending himself would be given, such an opportunity was denied;

(viii) The reply submitted by the petitioner to the charges was nto considered by the Headmaster and a show cause notice dated January 24, 1967 (Annexure K) was issued;

(ix) The Headmaster did nto place all the facts and circumstances relating to the petitioner's case before the Board;

(x) The Board which gave approval to issue of notice for terminating the petitioner's services was nto a 'full Board'

(xi) Any enquiry against the petitioner could only be under rule 11 and as such no action could be taken under rule 10 (ix) of the School Rules by terminating his services for 'continued unsatisfactory performance of duties.';

(xii) The principles of natural justice were violated; and

(xiii) The Headmaster did nto act in good faith and the entire proceedings against the petitioner were mala fide.

17. As mentioned earlier the Government had decided that the employees of the School shall cease to be Government servants with effect from the afternoon of December 31, 1952. In order to ascertain whether they were willing to be employed in the School under the Board to each one of them a letter dated December 26, 1952 (Annexure R/F) was sent by the Principal of the School Through that letter they were requested to indicate whether or nto they were prepared to continue to serve the School in the event of the Board deciding to retain them in service.

18. In paragraph 3 of the petition it was admitted that the petitioner was required to state 'whether he wanted to serve in pursuance of the direction given in letter dated 22-12-52' and that the 'petitioner accepted the compensation pension in lieu of his past services.' It seems to follow that the petitioner must have conveyed his willingness to be employed in the School under the Board in terms of the letter issued by the Principal of the School on December 26, 1952.

19. Shri H. S. Doabia, learned counsel for the petitioner, urged that the petitioner did nto agree to serve the Board. It was submitted that the communication dated April 8, 1955, a copy of which was attached by the respondents as Annexure R/D to their Return, did nto amount to an expression of willingness on the part of the petitioner to be employed in the School under the Board. This contention has, however, no force. If the petitioner had nto expressed his willingness he would have stated that in his petition and would nto have been retained in the employment of the Board. The contents of paragraph 3 of the petition rather show that the stand of the petitioner was that in spite of conveying his willingness to be employed in the School under the Board and his accepting the compensation pension from the Government in lieu of his services uptill the end of De- cember 1952 he did nto cease to be a Government servant.

20. It appears that the reply sent by the petitioner to the letter of the then Principal of the School, dated December 26, 1952, was lost. As stated in the Return of the respondents he was, thereforee, made to sign a chit on April 8, 1955 to the effect that he had read the Rules and Standing Orders of the School and accepted them in all respects. On coming to know from the Return that the original reply of his was nto with the School authorities an effort was made to even deny that the petitioner had conveyed his willingness to serve the School under the Board.

21. The learned counsel for the petitioner further contended that conveying his willingness by the petitioner to serve the School under the Board was immaterial if the Government could nto abolish the posts held by members of the staff, particularly the permanent posts, without complying with the requirements of Article 311 of the Constitution of India. Reliance was placed by him on Abdul Khalik Renzu v. State of Jammu and Kashmir Air 1965 J&K; 15 , Moti Ram Deka v. General Manager. North East Frontier Railway : (1964)IILLJ467SC and Prem Behari Lal Saxena v. State of U. P. : (1967)ILLJ357All .

22. In the case of Abdul Khalik Renzu Air 1965 J&K; 15 (FB) a Full Bench of the Jammu and Kashmir High Court took the view that even if the service of a permanent servant is terminated on the abolition of a post, it is a very serious action and, thereforee, the provisions of Section 126 of the State Constitution

(corresponding to Article 311 of the Constitution of India) are invoked. The case of Moti Ram Deka was considered to support that view. The latter case, however, did nto relate to abolition of a post but to termination of employment under rules 148 (3) and 149 (3) of the Indian Railway Establishment Code which permitted termination of the services of all permanent servants to whom those rules applied on giving notice for the specified period or on payment of salary in lieu thereof. Gajendragadkar, C. J. while delivering the main judgment of the Court made the following observations:

'Reverting then to the nature of the right which a permanent servant has under the relevant Railway Rules, what is the true position? A person who substantively holds a permanent post has a right to continue in service, subject of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must, per se amount to his removal, and so, if by Rule 148 (3) or Rule 149 (3) such a termination is brought about, the Rule clearly contravenes Article 311(2) and must be held to be invalid. It is common ground that neither of the two Rules contemplates an enquiry and in none of the cases before us has the procedure prescribed by Article 311(2) been followed. We appreciate the argument urged by the learned Additional Solicitor-General about the pleasure of the President and its significance; but since the pleasure has to be exercised subject to the provisions of Article 311(2) there would be no escape from the conclusion that in respect of cases falling under Article 311(2), the procedure prescribed by the said Article must be complied with and the exercise of pleasure regulated accordingly.'

The learned Judges of the Jammu and Kashmir High Court had, however, referred to the following passage in the separate judgment written in the case of Moti Ram Deka, : (1964)IILLJ467SC by Subba Rao. J., as he then was:

'There is no justification for placing any limitation on the said expressions such as that the dismissal or removal should have been the result of any enquiry in regard to the Government servant's misconduct The attempt to imply the said limitation is neither warranted by the expressions used in the Article or by the reason given, namely, that otherwise there would be no point in giving him an opportunity to defend himself. If this argument be correct, it would lead to an extraordinary result, namely that a Government servant who has been guilty of misconduct, would be entitled to a 'reasonable opportunity' whereas an honest Government servant could be dismissed without any such protection. In one sense the conduct of a party may be relevant to punishment) ordinarily punishment is meted out for misconduct and if there is no misconduct there could nto be punishment. Punishment is, thereforee, correlated to misconduct, both in its positive and negative aspects. That is to say punishment could be sustained if there was misconduct and could nto be meted out if there was no misconduct. Reasonable opportunity given to a Government servant enables him to establish that he does nto deserve the punishment because he has nto been guilty of misconduct. That, apart, a Government servant may be removed or dismissed for many other reasons such as retrenchment, abolition of post, compulsory retirement and others. If an opportunity is given to a Government servant to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him.'

23. The above-quoted passage does lend support to the view that even in a case of abolition of a post Article 311 would be applicable and on an opportunity being given to the Government servant concerned to show cause against the proposed action, he may be able to plead that there was no genuine abolition of the post.

24. As already stated, in the case of Moti Ram Deka : (1964)IILLJ467SC , the Supreme Court was nto dealing with abolition of a post. The majority judgment of the Court did nto adopt the view that Article 311 was attracted even to abolition of a post. On the contrary reference was made to the well-known case of Parshotain Lal Dhingra v. Union of India, : (1958)ILLJ544SC in which their Lordships of the Supreme Court summed up the position of a servant substantively appointed to a permanent post as under:

'In the absence of any special contract, the substantive appointment to a permanent post gives to the servant so appointed a right to hold the post until, under the rules he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannto be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him.'

In the same judgment, at another place, the following passage occurs:

'It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannto be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2).

25. The first portion extracted above from the case of Parshotam Lal Dhingra, : (1958)ILLJ544SC was specifically referred to in the later case of Moti Ram Deka and was, along with some other cases, relied upon for the view that termination of the services of a permanent Government servant otherwise than on the ground of superannuation or compulsory retirement under the rules must per se amount to removal. As in that case there was no question of abolition of the post in the findings, it seems to us, there was no pointed reference to the abolition of a post being one of the exceptions due to which termination of the services of such a servant would nto amount to his removal or attract Article 311 of the Constitution. In the case of Moti Ram Deka, : (1964)IILLJ467SC , thereforee, the Supreme Court does nto appear to have taken a different view from that in the case of Parshotam Lal Dhingra. We are in respectful agreement with the view taken by the Bombay High Court in the case of P. V. Naik v. State of Maharashtra, : AIR1967 Bom482 that the majority judgment in Moti Ram Deka's case, : (1964)IILLJ467SC either approved or in any event did nto disapprove the observations in the case of Parshotam Lal Dhingra, : (1958)ILLJ544SC relating to the termination of the

services of a Government servant upon abolition of his post.

26. Tripathi, J. in the case of Prem Behari Lal : (1967)ILLJ357All was of the view that the employer enjoys an inherent right to abolish a post even of a permanent character, but that this can be done only after giving notice to the incumbent whose removal follows automatically. The learned counsel for the petitioner placed reliance upon that part of the observations of the learned Judge according to which notice to the incumbent of a permanent post is necessary before the post is abolished.

27. It seems to us and we say this with very great respect to the view taken in the case of Abdul Khalik Renzu Air 1965 J&K; 15 (FB) and Prem Behari Lal, : (1967)ILLJ357All , that Article 311 of the Constitution is nto attracted to termination of services consequent upon abolition of a post. In Rulya Ram v. Union of India (1966) 2 DLt 600 Grover, J, observed that there was no constitutional or other prohibition against the abolition of a post by the Government and if a post is abolished then the right of the servant to hold the post comes to an end.

28. Giving any notice to the petitioner or complying with the requirements of Article 311(2) was nto necessary before the post held by him was abolished. In any case the petitioner had been given notice through a communication dated December 26, 1952 that the posts held by the employees of the School were to cease on the last date of that month. He did nto in any way raise any objection or contend that the abolition of posts was nto genuine. On, the contrary he accepted the compensation pension in lieu of his services under the Government and on expressing his willingness to serve the School was retained, in service by the Board though at first on a temporary basis.

29. It follows that the Government was competent to abolish the posts which were held by the employees of the School prior to December 31, 1952. On the abolition of those posts the petitioner, like other members of the staff, ceased to be a Government servant from the afternoon of the last day of December in that year.

30. The next contention raised by Shri Doabia was that even if the petitioner had ceased to be a Government servant from the afternoon of December 31, 1952 his

further employment under the Board again made him a Government servant as the Society and the Board were nothing but 'puppets' of the Government and for all practical purposes persons employed in the School under the Board were Government servants.

31. In support of his submission that the Society or the Board were no better than a Department of the Government the learned counsel for the petitioner referred to various provisions of the Regulations of the Society. It was pointed out that under regulation 4 the Board comprises of three representatives and four members nominated by the Government. The power to remove members of the Board is also that of the Government. Under regulation 5 a member other than an ex-officio member can resign his office by addressing a letter to the Secretary to the Government, Ministry of Education. The Chairman of the Board is a representative of the Government from the Ministry of Education and Scientific Research. As provided by regulation 6 vacancies in the Board are to be filled by nomination by the Government. The power of calling a general meeting of the Society is, under regulation 8, that of the Chairman. Regulation 13 requires sending of copies of proceedings of each meeting of the Board to the Government. Similarly regulation 15 postulates submission by the Society each year, within six months of the closing of the previous financial year, to the Government, in the Ministry of Education, a report on the working of the School in the previous year together with an audited statement of accounts showing income and expenditure of the previous year and the budget estimates for the ensuing year.

32. From the above referred to provisions it was tried to be inferred that the Society and the Board are supervised and controlled by the Government and have no Independent or autonomous existence. It was further urged that the properties of the School were nto transferred to the Board till June 18, 1954 and till then the employees were being paid their salaries by the Government and, thereforee, remained Government servants. State of U. P. v. Audh Narain Singh, : [1964]7SCR89 was cited in support of the argument that the power of superintendence and control on the Board and the Society coupled with payment of salary by the Government were indicative of the relation of master and servant between the Government and the petitioner even beyond the period commencing

from January 1953.

33. It is, however, nto possible to accept the reasoning that the Society or the Board was under the superintendence and control of the Government. Under the Regulations four members of the Society are nominated by the Government while the Secretaries to the Government in the Ministries of Education, Finance and defense are the ex-officio members. Similarly the Board comprises of three representatives of the Government besides four members who are nominated. The nominated members exceed in number the representatives of the Government on the Board. Merely because the members of the Board consist of nominees and representatives of the Government it does nto mean that the Board is nto an autonomous body but is a Department of the Government or what the learned counsel for the petitioner preferred to call 'puppets' of the Government. The Regulations do nto give the Government any power to interfere with the day-to-day working of the Board. There is no requirement for the Society to have its budget sanctioned from the Government or for the Board to obtain approval regarding any of its acts or proceedings. As the School originally belonged to the Government, it seems, the Regulations were so framed that the Government could remain aware as to how the Board was running the School and carrying on its administration. The only power given to the Government was of issuing directions to the Society in the matter of admission of 'Entitled Children' to the School and levy of fees from them. It was conceded before us that this power was of no practical consequence as the expression 'Entitled Children', as used in regulation 9, meant children of certain categories of British Officers who continued serving the Indian Army after the independence of the country and as no such children had sought admission to the School no directions had to be given by the Government.

34. The power of making appointments of the staff of the Society or the staff of the School was nto retained by the Government. According to the School Rules, the School budget is framed by the Board after taking into consideration the recommendations of the Treasurer made on the proposals submitted by the Headmaster. Subject to the general control of the Board the Headmaster has been given the sole authority and responsibility for all matters connected with teaching,

management and discipline of the School. Appointments to posts of Senior Master, Senior Mistress, Mistress in charge P. S. and Bursar are to be made by the Board and the other posts are to be filled up by the Headmaster by promotion or by direct recruitment, at his discretion. Under rule 10 (ix) the Headmaster has the power to terminate the services of any permanent member of the staff on grounds of retrenchment or continued unsatisfactory performance of duties by giving three months' notice in writing with the previous approval of the Board. Penalties, including that of removal from service, as provided in rule Ii, can be imposed by the Headmaster on members of the staff of the School, though against his orders imposing any penalty an appeal lies to the Board. The decision of the Board on appeal is final.

35. The Government is thus nto the supervising, controlling or administering authority for the School and its staff. No material was placed before us to show that the salary of the staff of the School was being paid directly by the Government till transfer of movable and immovable properties of the School took place about the middle of the year 1954. The stand taken by the learned counsel for the respondents was that salaries of the School staff from January 1, 1953 onwards were being paid from the funds of the Society and nto by the Government. Even if any grant had been made by the Government to the Society out of which salaries of the staff and other expenses of the School were being met that would nto be the same thing as payment of salaries directly by the Government.

36. The case of Audh Narain Singh : [1964]7SCR89 which was cited by Shri Doabia, can be of no assistance to the petitioner. That was a case of a Tahvildar who was appointed by a Government Treasurer in the Cash Department in the State of U. P. to assist him in the discharge of his duties. The appointment was made with the approval of the District Collector. It was held by their Lordships of the Supreme Court that selection by the employer, coupled with payment by him of remuneration or wages, the right to control the method of work and a power to suspend or remove from employment are, in general, indicative of the relation of master and servant though co-existence of all these indicia is nto predicated in every case to make the relation one of master and servant. It was also observed that the Government Treasurer being a Civil servant of the State holding a specific

post and being authorised by the terms of his employment to employ Tahvildars to assist him in discharging his duties, payment of remuneration to Tahvildars is for services rendered in the 'cashier department' of the 'District Treasury' of the State. As Tahvildars receive' their remuneration directly from the State, were subject to the control of the District Officers in the matter of transfer, removal and disciplinary action, even though a degree of control was exercised by the Government Treasurer and the appointment was in the first instance made by him with the approval of the District Officer, it was held that the Tahvildar concerned was entitled to the protection of Article 311 of the Constitution.

37. None of the indicia mentioned in the case of Audh Narain Singh, : [1964]7SCR89 , exists in the present case. The petitioner, cannto thereforee, be regarded a Government servant or entitled to the protection of Article 311 of the Constitution. In the General Manager, Pepsu Road Transport Corporation, Patiala v. Gurdip Singh (1964) 66 Pun Lr 1040 it was held by Khanna, J, that in order to see whether a person is entitled to the benefit of Article 311 of the Constitution one has to look to the post he is holding at the time the disciplinary action is taken against him and the fact that the corporation was at the time of employment of the person proceeded against a Government concern would be of no avail to him. The learned Judge further observed that Article 311 applies only to a person who is a member of a Civil Service of the Union or of a State of the holder of a civil post under the Union or a State. The petitioner was neither a member of the Civil Service nor a holder of a civil post under the Union. He was, at the time action was taken against him for termination of his services, only an employee of the Board or the Society.

38. Another submission of Shri Doabia was that even if the Society and the Board were nto a Department of the Government and the petitioner had become an employee of the Board or the Society still a writ can be issued for quashing the order of the Headmaster of the School by which he terminated the petitioner's services, as statutory obligations imposed on the Society which is a statutory body, were contravened. It was urged that the Society could be regarded as 'the State' for purposes of Article 12 of the Constitution, being an authority within the territory of India or under the control of the Government. The School Rules were

contended to be statutory in character, having been framed as required by Section 2 of the Act and, thereforee to be covered by the definition of 'law' as given in Article 13(3) of the Constitution. Dukhooram Gupta Hari Prasad Gupta v. Co-operative Agricultural Association Limited, Kawardha : (1962)ILLJ353MP and S. R. Tewari v. District Board, Agra : (1964)ILLJ1SC were cited.

39. The Madhya Pradesh High Court in the case of Dukhooram quashed an order of suspension passed in contravention of a bye-law of the Co-operative Agricultural Society, which was a Society registered under the Co-operative Societies Act, 1912. The Court held that the bye-law answered the test of 'laws' and stood on the same footing as a statutory rule so far as enforcement was concerned and the Society being an 'authority' within the meaning of Article 12 could be regarded as 'the State' for purposes of Part Iii of the Constitution. While dealing with the contention that the terms and conditions of employment being a matter of contract between the Society and its servants cannto form the subject matter of prerogative writs the learned Judge observed:

'This contention is correct where the relation between the master and servant is a matter of contract alone. The position is, however, different where in addition to the contract, there is specific bye-law on the point. The bye-law gives a legal right to the servant apart from the contract and both the society and the servant are bound by it. In our opinion, the enforcement of such a legal right forms an appropriate subject-matter for the issue of a writ under Article 226 of the Constitution.'

40. In the case of S.R. Tewari, the District Board, Agra terminated the employment of a person who was holding the post of an Engineer, after giving him salary for three months in lieu of notice. The appeal filed by him to the Government of U. P. against the order terminating his employment was dismissed. In the Supreme Court it was contended by the counsel for the District Board that the Engineer nto being a member of the Civil Service of the State was nto entitled to protection of Article 311 of the Constitution and the relief claimed by him being in substance for an order restoring him to the service of the District Board from which he was dismissed, the jurisdiction of the High Court even under Article 226 of the

Constitution was restricted by Section 21-B of the Specific Relief Act and that the relief claimed by him could nto in any event be given as the remedy, if any, of that person was to claim damages by a suit for wrongful termination of employment and nto a petition for writ declaring the termination of employment unlawful and consequential order for restoration in service. Their Lordships of the Supreme Court did nto agree that the High Court had no power to declare 'the statutory obligations of a statutory body.'

It was observed that the Courts are invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does nto desire to do. In that particular case, however, the Supreme Court did nto consider a departure to be called for from the rule that a contract of service will nto ordinarily be specifically enforced.

41. The submission made by Shri D. N. Avasthi, learned counsel for the respondents, was that the Society was nto an authority for purposes of Article 12 or 226 of the Constitution and no writ could, thereforee, be issued by the High Court. According to him the relationship between the petitioner and the Board was that of a private servant and master alone and there being no breach of any 'law' or mandatory obligation imposed by statute on the Society or the Board the only remedy of the petitioner was to file a suit for damages if he considered the termination of his services to be against the contract of his service. He referred to Gulabchand Gupta v. Hitkarini Sabha Jabalpur : AIR 1963 MP270 and Kartick Chandra Nandi v. West Bengal Small Industries Corporation, : AIR1967 Cal231 .

42. In the case of Gulabchand Gupta : AIR 1963 MP270 it was held that unless the body or association of persons against whom a writ of certiorari is sought has legal authority to determine questions affecting the rights of subjects and is required to act judiciously in that determination, no writ can be issued for quashing its decision or determination. In that case Hitkarini Sabha, which was registered under the Act, was nto considered to have legal authority to take decisions affecting rights of subjects.

In the other case of Kartick Chandra Nandi : AIR1967 Cal231 Basu, J., took the view that in order to constitute 'other authorities', within the meaning of Article 12 of the Constitution, the body must be a body created by statute haying the power to make regulations, which have the force of law, or has power to exercise statutory powers as a public authority and that a non-statutory body, such as a company, and having no statutory powers cannto come within the definition of 'the State' in that article.

43. Article 12 provides that in Part Iii of the Constitution, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each State and all local or other authorities within the territory of India or under the control of the Government of India. The expression 'other authorities', as used in this article, recently came up for consideration before the Supreme Court in Rajasthan State Electricity Board, Jaipur v. Mohan Lal, Civil Appeal No. 466 of 1966 D/- 3-4-1967 = : (1968)ILLJ257SC . Bhargava, J. while delivering the majority judgment of the Court observed that the doctrine of ejusdem generis could nto be applied to the interpretation of the expression 'other authorities' as used in Article 12 of the Constitution. The words were considered to be of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government.

After referring to certain decisions it was observed:

'These decisions of the Court support our view that the expression 'other authorities' in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is nto at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under, the Constitution, the State is itself envisaged as haying the right to carry on trade or business as mentioned in Article 19(1)(g). In Part Iv, the State has been given the same meaning as in Article 12 and one of Directive Principles laid down in Article 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the

educational and economic interests of the people.'

44. The Society controlling and administering the School can, in our opinion, be regarded an authority created under a statute, on whom some powers are conferred by law, and which functions within the territory of India. It is a body created for the purpose of promoting educational interests of the people.

45. The reasoning adopted in some cases invoking the application of the rule of ejusdem generis in determining whether a body or association of persons is covered by the expression 'other authorities', for purposes of Article 12 of the Constitution, can no longer be regard- ed to be correct. The majority view in the case of Rajasthan Electricity Board, Civil Appeal No. 466 of 1966 D/- 3-4-1967 : : (1968)ILLJ257SC did nto put a narrow interpretation on the expression 'other authorities'. That expression was nto interpreted to mean only those constitutional or statutory authorities which were invested with sovereign powers, i.e., powers to make rules or regulations and to administer or enforce them to the detriment of citizens and others. In view of this judgment of the Supreme Court it is also nto necessary to discuss the authorities on which reliance was placed by the learned counsel for the respondents. Mention may only be made of a very recent case, Umesh Chandra Sinha v. V. N. Singh Air 1968 Pat 3 in which a Full Bench of the Patna High Court, following the case of Rajasthan State Electricity Board, Civil Appeal No. 466 of 1966 D/-3-4-1967 : : (1968)ILLJ257SC held that any public authority created by statute on whom powers are conferred by law must be held to be a 'State' irrespective of whether the functions of that authority are sovereign functions or non-sovereign functions such as spreading of education. The Society is comprehended by the expression 'other authorities' in Article 12, being a statutory authority on whom certain powers are conferred by the law under which it was registered. The Society can also be considered to be an authority for purposes of Article 226 of the Constitution.

46. The important question, however, is whether the rules relating to general conditions of service of the staff of the School were statutory in character, as was contended by the learned counsel for the petitioner. The argument advanced by him was that under Section 1 of the Act any seven or more persons associated for

any literary, scientific or charitable purpose or for any such purpose as is described in Section 20 of the Act may by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint Stock Companies, can form themselves into a Society under the Act. Further under Section 2 of the Act, it was stated, a copy of the rules and regulations of the Society, certified to be a correct copy by nto less than three members of the governing body, has to be filed with the memorandum of association with the Registrar of Joint Stock Companies. It was urged that the rules, under which action was taken against the petitioner, had been filed with the memorandum of association and may be regarded to have been made under Section 2 of the Act and, thereforee, to be statutory in character. Section 2 of the Act does provide for the rules and regulations of the Society to be filed with the Registrar of the Joint Stock Companies along with the memorandum of association. Annexure R/C is a copy of the Memorandum of Association and the 'Regulations' of the Society. The Regulations are shown to have been certified to be correct by three members of the Board.

47. It appears that the so-called Regulations were intended to be both the rules and regulations of the Society. Regulation 3 provides: 'The Governing Body of the Society, to which by the rules of the Society the management of its affairs is entrusted, shall be called the Board of Governors, Lawrence School, Sanawar, (Simla Hills)'. The powers of the Board are given in regulation 7. There is nto the slightest indication that the School Rules (Annexure R/E) were filed with the memorandum of association with the Registrar of the Joint Stock Companies, as required under Section 2 of the Act. These do nto purport to be certified to be correct by any member of the Board. The School Rules have, thereforee, no link with Section 2 of the Act. In the petition as well it was stated in unequivocal terms that the Rules of the School have no legal force and cannto be called the Rules of the Society. According to the petitioner himself these were mere directions. The relevant portion from the petition reads as under:

'So far as the Rules of the Lawrence School are concerned, it is submitted that the same have gto no legal force. These Rules cannto be called the Rules of the Society and there is no indication as to under what Regulation or Regulations the

same are made. The Rules of Lawrence School, Sanawar, under which the impugned order is passed have gto no legal validity. These are mere directions and the power given to the Headmaster of the said School under the said Rules is wholly illegal and ineffective.....'

48. The School Rules which contain the conditions of service applicable to the staff employed in the School under the Board, nto being statutory in character, these do nto fall within the definition of 'law' as given in clause (3) of Article 13 of the Constitution. The Rules, thereforee, did nto impose any statutory obligations on the Society. So even if the petitioner's services were terminated in breach of any of the requirements of the School Rules it cannto be said that the breach was of a mandatory obligation imposed by statute or law. The case of S.R. Tewari, on which reliance was mainly placed by learned counsel for the petitioner in support of his proposition that in a suitable case a writ may be issued to declare invalid or quash an act or an order of a statutory body if by doing the act or making the order the body had acted in breach of a mandatory obligation imposed by statute, can be of no help to the petitioner. In another case, Lekhraj Sathramdas Lalvani v. N. M. Shah, Deputy Custodian cum Managing Officer, Bombay : [1966]1SCR120 , their Lordships of the Supreme Court observed:

'. . . . .a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions. In the present case, the appointment of the appellant as a Manager by the Custodian by virtue of his power under Section 10(2)(b) of the 1950 Act is contractual in its nature and there is no statutory obligation as between him and the appellant. In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannto be enforced by the machinery of a writ under Article 226 of the Constitution.'

49. The School Rules nto being statutory in character or having the force of law there has been no breach of 'mandatory obligation imposed by statute' and as

such no writ can be issued in this case. For a breach of the contract of service, if any, the remedy of the petitioner would be to file a suit for damages.

50. Elaborate arguments were addressed to us by the learned counsel for the petitioner in support of his contention that the action taken against the petitioner was mala fide as it was the result of bias on the part of Mr. Manley, the new Bursar of the School, and the influence exerted by him on the Headmaster. In this connection it was stated that the new Bursar had become inimical towards the petitioner as the latter refused to oblige him in the matter of rendering some private services. It was further urged that there was no proper enquiry as full copies of statements recorded by a fact finding Committee, appointed by the Head master, were nto supplied and the procedure adopted for terminating the petitioner's services amounted to complete denial of the principles of natural justice. It was vehemently contended that no proper prior approval of the Board was obtained, as was required by rule 10 (ix) of the School Rules. In that connection the argument of the learned counsel was that there was no quorum for the meeting of the Board held on February 10, 1967. The Government was urged nto to be competent to depute two new representatives from the Ministry of Education to act as Chairman and a member of the Board only for purposes of that meeting. On the assumption that Shri G. K. Chandramani, Additional Secretary, and Shri P. Gangulee, Deputy Secretary, had nto been legally appointed Chairman and member respectively in place of Shri Prem Kirpal and Shri N. D. Sundra Vadiyelu, a submission was made that the requisite quorum of three members was nto present and consequently the requirement of the previous approval of the Board before giving three months' notice had nto been complied with. Further the action taken was alleged to be penal in character and, thereforee, to fall under rule 11 and nto rule 10 (ix) of the School Rules.

51. On behalf of the respondents the stand taken by their learned counsel was that Mr. Manley or the Headmaster had no bias or prejudice against the petitioner and that they had been most considerate in their treatment of the petitioner and action was taken for terminating his services in good faith and as a result of objective assessment of the deterioration in his efficiency, work and conduct. The Board was stated to have been kept fully informed at all stages and that the fact finding

Committee to have been appointed under orders of the Board. It was submitted that Servshri G. K. Chandramani and P. Gangulee were rightly appointed as representatives of the Government on the Board and it was incorrect to say that there was no quorum for the meeting of the Board held on February 10, 1967. In any event, it was urged, any defect in the nomination of any persons to act as members of the Board could nto invalidate its proceedings by virtue of regulation 6. It was stated that no enquiry was required for taking action under rule 10 (ix) of the School Rules due to the termination of services under that rule nto being a penalty. The procedure adopted was mentioned to have been resorted to mainly with the object of satisfying the mind of the Board and the Headmaster that no injustice was being done to the petitioner. It was also contended that the principles of natural justice were fully complied with.

52. The averments contained in the petition to show as to why Mr. Manley had turned against the petitioner were to the effect that the Bursar had started taking various kinds of private services from the petitioner but that after some time the petitioner had to refuse to unduly oblige the Bursar. The Headmaster was as well stated to have 'become inimical towards the petitioner and tried to harm him' on being influenced by the Bursar. Another allegation made was that the Bursar had used abusive language against the petitioner.

53. In his affidavit Mr. Manley stated that it was wrong to suggest that he had extracted any special private services from the petitioner. He, however, frankly admitted that for about an year or a bit longer he used to ask the Quartermaster to do petty private jobs for him on his official visits to Chandigarh in the School bus, such as to 'bring a little fruit or bread, or have a badminton racket restrung.' He added that there had been a practice for members of the staff to obtain their petty personal requirements from places like Chandigarh or Ambala owing to the isolated and out of way location of the School. It was emphatically asserted that there was no question of the petitioner obliging him in any way or that the petitioner had refused to bring those things for him or for any other member of the staff. Mr. Manley as well affirmed that long before the trouble started he had stopped getting things through the petitioner as he had realised that the latter was a person who may unduly exploit even this sort of thing. The allegations about his

feeling embittered against the petitioner or influencing the Headmaster or using any abusive language for the petitioner were unequivocally denied. The Headmaster also filed an affidavit in which he took the stand that he had 'always treated the petitioner generously and has never had anything personal against him.'

54. No details were given by the petitioner regarding the alleged various kinds of private services which according to him the Bursar had been taking from him. It thus appears that the facts stated in the affidavit of Mr. Manley are correct. It was a very petty matter if on his visits to Chandigarh or Ambala, in the School bus, the petitioner had brought small articles like fruit or bread for the Bursar or other members of the staff. The allegations that the Bursar turned against him due to his inability to oblige the former in the matter of rendering private services, it seems, were made to make his case more plausible. It is, however, nto necessary to give any findings on this matter and on the contentions of the learned counsel for the parties as to the correctness, justification or legality of the termination of the petitioner's services.

55. As no writ can be issued to quash the order by which the petitioner's services were terminated we have nto considered it proper to give any findings on matters that may be involved in a suit which may be instituted by the petitioner to claim damages from the respondents in case he considers the termination of his services to be wrongful.

56. For the reasons given above the petition for quashing the order of the Headmaster, dated March 20, 1967, by which the petitioner's services were terminated, is dismissed. Considering all the circumstances of the case we, however, leave the parties to bear their own costs.

Rgd

57. Petition dismissed.

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