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Court : Delhi

Decided On : Apr-04-1984

Reported in : 26(1984)DLT127; 1985LabIC148; (1984)IILLJ339Del

Judge : Avadh Behari Rohatgi and; G.C. Jain, JJ.

Acts : Registration of Societies Act, 1860; [Constitution of India](#) - Articles 12, 14, 15, 16, 21, 226, 213 and 311; Indian Contract Act - Sections 200; Central Civil Services (Temporary Service) Rules, 1949 - Rule 5; Central Civil Service (Conduct) Rules, 1964; Control and Appeal Rules, 1965; Registration of Societies Rules - Rules 3, 4, 10.1, 11.2, 11.4 and 21

Appeal No. : Civil Writ Petition No. 1128 of 1980

Appellant : Raghunandan Prasad

Respondent : The Institute for the Physically Handicapped and Others

Judgement :

Avadh Behari Rohatgi, J.

1. Disabled and physically and mentally handicapped are receiving increasing attention all the world over. The Central Government under the auspices of the

Department of Social Welfare in the Ministry of Educations, Social Welfare Culture Health established in 1976 a body called 'The Institute for the Physically Handicapped' at New Delhi ('the Institute'). This is a society registered under the Registration of Societies Act, XXI of 1860. The main object of the Institute is the 'education and rehabilitation of the handicapped'. It offers rehabilitation services, such as education, training, work-adjustment to Orthopedically handicapped persons, mentally retarded and others. For the rehabilitation of the handicapped, the Institute trains physiotherapists, occupational-therapists. They also manufacture and distribute such aids and appliances as are needed for the rehabilitation of the handicapped.

2. The Society has framed Rules. Rule 3 provides for two main authorities of the Institute, namely, (1) the General Council, and (2) the Standing Committee.

3. Rule 4 prescribes the composition of the General Council. It consists of (i) the Secretary to the Government of India in charge of Social Welfare, who is the President of the Council, (ii) two prominent social workers to be nominated by the Government of India, (iii) one prominent medical practitioner to be nominated by the Government of India, (iv) an officer designated by the Ministry of Finance, Government of India, (v) a representative of the Department of Social Welfare, (vi) Director of the Institute who is Member Secretary of the General Council, and (vii) not more than ten persons who in the opinion of the Government of India are experienced or knowledgeable either in the field of Social Welfare or in the management of public finance who are nominated by the Government of India.

4. Rule 7 provides for the composition of the Standing Committee of the Institute. It consists of a Chairman, three members and the Director. The Chairman is a representative of the Department of Social Welfare. He presides over the meetings of the Committee. One member is an officer designated by the Ministry of Finance. A second member is a non-official member of the General Council elected by the General Council. The third member is a non-official member of the General Council nominated by the President of the General Council. The Director acts as the Secretary and the Treasurer of the Standing Committee.

5. From the Rules it appears that the General Council is like the legislative body. The Secretary to the Government of India in charge of the Social Welfare is the President of the Council. The Standing Committee is the executive body. Its Chairman is a representative of the Department of Social Welfare. The Director of the Institute is the principal officer of the Institute. He is Secretary and to the General Council. He is Secretary Treasurer of the Standing Committee. His main duty is 'to ensure the efficient functioning of the Institute in all units' (Rule 11.4(ii)). He exercises such other executive powers as are delegated by the Standing Committee from time to time.

6. The petitioner, Raghunandan Prasad, was appointed as the Director of the Institute. The post was advertised. He was selected by the Standing Committee. By letter dated 2nd May, 1977, he was offered a 'temporary appointment' to the post of Director on a salary of Rs. 1,500-60-1,800. The material terms of the appointment letter are the following :

'(v) He will be on probation for a period of 6 months from the date of appointment. The probation period may be extended or curtailed at the discretion of the competent authority subject to a maximum of one year. Failure to complete the period or probation to the satisfaction of the competent authority will render him liable to discharge from service or reversion to his parent employer, as the case may be;

(vi) The appointment may be terminated at any time on three months' notice from either side viz. The appointee or the appoint authority, without assigning any reason :

(vii) Other conditions of service will be governed by the relevant rules and orders in force from time to time in the Institute for the Physically Handicapped.'

7. On these terms, the petitioner accepted the appointment. By order dated 31st July, 1978, the petitioner was confirmed as Director with effect from 31st July, 1978. By letter dated 2nd August, 1978, the Chairman of the Standing Committee informed the petitioner that he 'is appointed to the post of Director on a regular basis with effect from 1st August, 1978.'

8. The petitioner's parent department was the All India Institute of Medical Sciences where he had served as a Vocational Councillor in a permanent capacity before he became the Director of the Institute. He had kept his lien on that post. Finally, the lien was terminated with effect from 19th November, 1978 as would appear from the letter of the All India Institute of Medical Sciences dated 30th November, 1978. One increment was also granted to the petitioner on 5th January, 1980 in his new post.

9. By letter dated 22nd August, 1980, the Chairman of the Standing Committee terminated the services of the petitioner. The order was in these terms :

'In pursuance of the terms and conditions of appointment as Director, Institute for the Physically Handicapped, accepted by Shri Regunandan Prasad, vide his letter dated 11th May, 1977 and contained in Order No. IPH/Dir/77 dated 17th September, 1977, it is hereby ordered with the approval of the Central Government, that the services of Shri Raghunandan Prasad stand terminated with effect from the afternoon of 22nd August, 1980.

It is further ordered that Shri Prasad will be paid salary equivalent to three months' pay and allowances, in lieu of the notice period envisaged in the terms and conditions of service of Shri Prasad.'

10. So within the short span of 3 years the services of the petitioner were terminated. On 27th August, 1980, the petitioner brought the present writ petition under Art. 226 of the Constitution challenging the order of dismissal dated 22nd August, 1980 passed by the Chairman of the Standing Committee.

Competence of the Chairman, Standing Committee

11. The first question which arises for decision is whether under the Rules of the Institute the Chairman of the Standing Committee has power to pass an order of termination of the Director's services. In this case, the Chairman of the Standing Committee with the approval of the Central Government passed the impugned order on 22nd August, 1980. Subsequently at the meeting of Standing Committee convened on 1st November, 1980, he got it ratified from the Standing Committee.

In the minutes of the meeting of the Standing Committee of 1st November, 1980, it is recorded that the 'Committee noted and accepted the decision taken by the Chairman with the approval of the Government.' The Committee was informed that the petitioner had filed a writ petition against the Institute it would, therefore, appear that the ratification of the Chairman's decision was subsequent to the filing of the writ petition.

12. Rule 10.1(iv) provides for the powers and functions of the Standing Committee. One of the power is :

'to create such posts as are necessary to administer the Institute and recruit and appoint staff, except that the prior approval of the Government of India shall be required for appointment to the post of Director of the Institute.'

From this provision it appears that only the Standing Committee can appoint a Director with the prior approval of the Government. Similarly, it is the Standing Committee and the Standing Committee alone which can dismiss the Director with the prior approval of the Government. No one else has been given this power. The Chairman of the Standing Committee cannot by himself exercise this power, even though he has obtained the prior approval of the Central Government. The fact that the Standing Committee met subsequently to ratify the action of the Chairman clearly shows that the meeting of the Standing Committee was never convened for the purpose of dismissing the Director. They were informed on 1st November, 1980 that the Chairman had terminated the services of the Director and this they 'noted and accepted.'

13. It appears to me that the termination order dated 22nd August, 1980 is null and void because it was passed by the Chairman. Only the Standing Committee could pass it with the prior approval of the Central Government. The Chairman is not the Standing Committee. The Standing Committee consists of the Chairman, three Members and a Secretary and Treasurer.

14. In order to see who had the power to dismiss the Director, it is necessary to see who had the power to appoint him; for no one could dismiss who could not appoint. The power of appointment is in the Standing Committee with the prior

approval of the Government. The Chairman could not, therefore, dismiss the Director, because he could not appoint him all by himself. The power to appoint and dismiss the Director is vested in the Standing Committee as is clear from Rule 10.1(iv). There cannot, at one and the same time be two authorities, each of whom has a concurrent power, to appoint the Director. One or the other must be entrusted with the power to appoint. That power is given only to the Standing Committee and no one else.

15. Faced with this difficulty, counsel for the Institute, Mr. P. P. Rao, relied upon Rule 11.2, which provides as follows :

'Powers and duties of the Chairman of the Standing Committee :

(i) To preside over the meetings of the Standing Committee.

(ii) To take emergent action whenever exigencies of the situation demand in the interest of the Institute and to have the same ratified by the Standing Committee as its next meeting.'

16. The Chairman acting under emergency power passed the order of termination and then went to the Standing Committee to have his action ratified by them at the next meeting. The question arises : Was there an emergency which required the Chairman to take 'emergent action' In my opinion, there was no emergency of any kind requiring the Chairman to taken an immediate action of which the power vested only in the Standing Committee. As emergency in an unforeseen occurrence or combination of circumstances which calls for an immediate action or remedy. 'A condition of things causing a reasonable apprehension of danger would, I think, constitute an emergency'. (Larchbank (owners) v. The British Patrol (owners), the Larchbank : (1943) AC 299, per Lord Atkin). I cannot, therefore, accept the contention that the Chairman was competent to pass the termination order because it was an 'emergent action.'

17. Mr. Rao referred us to S. K. G. Sugar P. Ltd. v. State of Bihar, : [1975]1SCR312 in support of his submission that the Chairman is the sole judge of circumstances necessitating an 'emergent action' and that his satisfaction is not a

justiciable matter. That was a case of Governor's power to issue ordinances under Art. 213 of the Constitution. It has no relevance to the issue before us. The conclusion of the chairman in a given case that there is need for an 'emergent action' is entitled to weight but not conclusive. In *S. K. Gupta v. Union of India* : AIR1977 Delhi209 , a full bench of this court held that emergency is justiciable. See also *Hukam Chand v. Union of India*, : [1976]2SCR1060 .

18. Nor there can be any ratification of an act which is null and void. Section 200 of the Contract Act provides :

'Ratification of unauthorised act cannot injure third person :- An act done by one person on behalf of another, without such other person's authority, which, if done with authority would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.'

19. The general rule as to ratification does not apply when it would affect the rights of third party. Subsequent ratification by the competent authority cannot be done when the original action was initially illegal and inoperative. The Director was dismissed by the Chairman. But only the Standing Committee had the power to do so with the prior approval of the Government. The Chairman cannot usurp functions of the Standing Committee. The Standing Committee acts as a body. They deliberate and decide whether to terminate the services of the Director or not.

20. On this aspect of the case, I hold that the order of termination dated 22nd August, 1980 is null and void. Since the order of termination was a nullity, the Standing Committee could not ratify it. The original defect could not be cured so as to affect adversely a third party, namely, the Director.

Natural Justice

21. The petitioner claims that his dismissal is void, inoperative and of no effect. He put it on two grounds : (i) his dismissal was effected by a person who had no power to dismiss him, as it was contrary to Rule 10.1(iv); (ii) he was not given a

reasonable opportunity of being heard. I have already dealt with the first ground. Now the question is about reasonable opportunity. It is not disputed that the petitioner was not heard before the termination order was passed. It is argued by the counsel for the Institute that the petitioner was not entitled to a hearing because under the terms of the contract his services could be terminated by three months' notice or three months' pay in lieu thereof. This raises the fundamental question whether the petitioner's appointment was purely contractual or a public employment in which the employer is required to observe the principles of natural justice before terminating the contract of employment.

22. I cannot accede to the submission that the Director's appointment is purely contractual and that the Government had the right to terminate his services in accordance with the terms of the contract. In my opinion, the Director holds a post in public employment. The reason is that the Institute is an 'authority' within the meaning of Art. 12 of the Constitution. Mr. Rao did not dispute before us that the Institute is an 'authority' because it is completely funded, controlled and managed by the Central Government. The hand of the Central Government is seen every where in the Institute. The President of the General Council is the Secretary to the Government of India. The Chairman of the Standing Committee is a representative of the Department of Social Welfare. The Director has to be appointed by the Standing Committee with the prior approval of the Central Government. The composition of the General Council and the Standing Committee shows that predominantly the members of these bodies are nominated by the Government. The Department of Social Welfare is wing of the Ministry of Social Welfare. The Minister of Social Welfare gives his approval for the appointment and dismissal of the Director. He has the last word. The Institute is an instrumentality of the Government though it is registered as a Society. Even for the dissolution of the Society the prior consent of the Government is required (See Rule 21).

23. Fringe organisations are made responsible for the administration of many of the emergent social reforms such as rehabilitation of the physically handicapped. The Institute is one such fringe organisation. It is the State action in dismissing the Director which is impugned before us. The Central Government through the hand of the Chairman of the Standing Committee, who is none other than the Joint

Secretary of the Ministry of Social Welfare has dismissed the Director. The question is about the legality of the action of the Government.

24. The Rules provide that the Standing Committee will appoint and dismiss the Director with the prior approval of the Government. This is a clear of public employment. In public employment it is now well recognised that the principles of natural justice must be observed. To say that the court cannot review the State action in the field of contractual appointment is to emasculate the one control mechanism which it possess. If the master exercised power of removal without strict adherence to the rules of natural justice, the action can be challenged by the employee under Art. 226 of the Constitution. The court has to see whether the principles of natural justice have been observed and whether an opportunity was given to the aggrieved party to answer the accusations made against him. Were the standards of fairness observed in reaching the decision

25. Public employment has become for all purposes a subject of Administrative Law. The public element is so mixed in it that it ceases to be a contractual appointment. The cardinal development in this branch of law is that in public employment the employer is required to observe the principles of natural justice. The State must be fair, just and reasonable, because in fact the State is the employer. Fairness demands that the employee must be heard.

26. The termination order gives no reason why the Director has been dismissed. It rests itself on the contractual term of three months notice or three months pay in lieu thereof. In the counter, the Government has said that the petitioner was found unequal to the post of the Director. The Chairman of the Standing Committee in his affidavit dated 8th October, 1980 says - 'even after three years, he (the Director) was found not equal to the responsibilities attached to the three units of the Institute. It was considered in the interest of the Institute to relieve him urgently of the post of Director. Accordingly, I, as the Chairman of the Standing Committee, gave the petitioner a noticed of termination of services. This action was not unwarranted, high-handed or arbitrary'. This is a most damning indictment against the Director. Fairness demands that the Director should have been heard and an opportunity should have been given to show that he was equal to the task

assigned to him and the complaints were unfounded. The Chairman, with the prior approval of the Minister, took a decision against him. The incompetence was the decision. Against this decision, he had no opportunity to show that it was not so and that he was capable and competent.

27. One thing is clear. The Standing Committee can appoint and dismiss the employees. These things may be done, but they must be done fairly and justly, and not unfairly and unjustly. The power to dismiss the Director cannot be exercised by a process which in substance amounts to dismissal without a charge and without a hearing. The contract does not mean that the State as the employer can dismiss the employee for no reason and for no good cause. The victim can show that he was competent to discharge the responsibilities and burdens of the office. He can show that he was not unequal to the task and that the termination is a cover for malafide action.

28. The State is the employer. It is for the Court, having regard to course of proceedings, to decide whether, at the end of the day, there has been a result, reached by fair methods, such as the servant must have legitimately expected to receive at the hands of the master when he joined the service. If in the end the court finds that it is a fair decision, the servant shall be refused relief, as happened in Champak Lal's case. *Champak Lal v. Union of India*, : (1964)ILLJ752SC . If there has been no fair decision it would, no doubt, be right to quash the dismissal order. (*Calvin Lal v. Carr* (1980) AC 574).

29. The consequences of the arbitrary action by the State are so severe that the man is thrown out of employment. The Rules of the Society envisage that the Standing Committee as a body in an atmosphere of detached impartiality would examine the question of competence of the Director in relation to the work assigned to him and which he was appointed to do. The question of dismissal was never put before the Standing Committee prior to 1st November, 1980. They never arrived at any independent decision of their own before they ratified the act of the Chairman. On 1st November, 1980 they merely 'noted and accepted' the Chairman's decision. They merely acted as a rubber stamp and put their seal of approval on the dismissal order already made against the Director. If the original

decision of the Chairman is a nullity, the ratification must also be held to be a nullity.

30. Article 21 of the Constitution guarantees the right of life. Life and livelihood go together. It is impossible to think of one without the other. It is a matter of great importance to the man if he is asked to go away without being told what it is that has led to his dismissal. He is entitled to say :

'You take my life,

When you do take the means whereby I live.'

(Shakespeare : 'The Merchant of Venice, 'iv. i).

31. In *Board of Trustees v. D. R. Nadkarni* 1983 1 L.L.J. 1 the Supreme Court has held that life includes livelihood of a person and dismissal from service without fair procedure is violative of Art. 21 of the Constitution. Life is not mere animal existence but has much wider meaning so as to include finer graces of human civilization which make life worth living. *Belliappa's case* held that the Government servant is entitled to the protection of Arts. 14 and 16 of the Constitution. The case was followed in *Ajit Singh v. State of Punjab* 1983 1 L.L.J. 410 and in *Commodore Commanding v. V. N. Rajan* 1981 2 L.L.J. 1. But in *Board of Trustees* the law was taken one step forward.

32. Counsel for the Institute supported the order of dismissal on three grounds : firstly, that the Director's appointment was contractual; secondly, that the Chairman was not required to observe the principles of natural justice in proceedings relating to the Director's dismissal; thirdly, that the dismissal was made for a good cause as the Director was found unfit for the job. The salient features of his main argument can be summed up in these propositions : (i) that the writ petition is not maintainable; (ii) that the relationship is purely of master and servant and contractual in nature; (iii) that suit for damages is the proper remedy; (iv) that there was no intention to punish the man and that is why innocuous order was passed; (v) that the contract of service provides for three months' notice or pay in lieu thereof for terminating the contract of employment on either side. He

submitted that as this method was followed, there was no illegality in this termination order passed by the Chairman.

33. Mr. Rao referred us to *Radhakrishnan Aggarwal v. State of Bihar*, : [1977]3SCR249 and argued that at the time of entry into service a person can complain of discrimination or unfair treatment but after he has been selected and appointed the terms of the contract of employment will govern the parties. On this premise the submitted that the principles of natural justice are excluded and the Director was rightly dismissed as it was done in accordance with the contract. He also cited *Champak Lal v. Union of India*, (supra) to show that the services of a temporary government servant under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949 can be terminated by one month's notice and the Supreme Court held that Rule 5 is not hit by Art. 16 of the Constitution.

34. I cannot accede to the arguments of learned counsel. He wanted to sail between Scylla and Charybdis and take a middle course. In my opinion, he has attached excessive importance to contract. The historical development of law of master and servant shows that the contract has now gone in the background and status has come into the forefront. After the middle of the nineteenth century Maine's dictum was proving itself in the reverse order. In early societies the movement was from status to contract. In the last century the movement once again started from contract to status. We have now come full circle. The relationship between the employees and the instrumentalities of the Government is not purely that of master and servant founded only on contract. The Director was in public employment. The Institute is an 'authority' within the meaning of Art. 12 of the Constitution. The Government is the 'biggest employer in the country.' As Chinnappa Reddy, J. said 'In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporation are the biggest employers and where millions seek employment and security, to confine the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a court to enforce a contract of employment and denies him

the protection of Arts. 14 and 16 of the Constitution.' U. P. Warehousing Corporation v. V. N. Vajpayee 1980 1 L.L.J. 222. These observations were referred to with approval by a Bench of the Supreme Court in Som Prakash Rekhi v. Union of India and another 1981 1 L.L.J. 79.

35. Where there is a charge against the Director that his work was found to be unsatisfactory, he must be heard and reasons must be given.

36. The principal argument of Mr. Rao was that the Director had voluntarily entered into a contract of service on the terms of employment offered to him and one of the terms of that contract, he said, is the service was purely temporary and liable to termination on giving three months' notice or pay in lieu thereof by either side. He further argued that having willingly accepted the employment on terms offered to him, the petitioner cannot complain against the impugned action taken in accordance with those mutually agreed terms. In my opinion this argument is wholly misconceived. It is borrowed from the archaic common law concept that the employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment much of it has passed into the fossils of time. Such a philosophy of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers. To bring it in tune with vastly changed socio-economic conditions and mores of the day much of the old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the constitutional protection of Arts. 14, 15, 16, and 311 is available. This view was taken by Mathew, J. for the first time in Sukhdev Singh v. Bhagatram 1975 1 L.L.J. 399. It was followed by Sarkaria, J. in Government Branch Press v. D. B. Belliappa 1979 1 L.L.J. 156. It was taken further to new horizons and new frontiers by Chinnappa Reddy, J. in Vijay Narian Vajpayee (supra) and by Krishna Iyer, J. in Som Parkash Rekhi, (supra).

37. The real question is : Did the dismissed Director have a fair hearing Was he informed of the accusations against him Did he put his case in answer That there

is a term of three months' notice or pay in lieu thereof on either side does not provide a universal solvent. What is required to see is the nature of the appointment. If it is a public employment, a further question will arise whether the servant has had a fair deal. The procedure leading to his dismissal must be fair.

38. Acting inquisitorially, as it were, the Chairman reached the decision that the Director was no good for the job and straightway dismissed him. The Minister had concurred in this decision. The rules of natural justice were not observed. These require, at the least, that the person should be formally charged, heard in his defense and know the evidence against him. These essentials must be observed. In substance the man must have a full hearing with opportunity to bring evidence and have it heard. It is in the legal framework of State action that the issue of dismissal has to be adjudged.

39. Counsel for the Institute invited us to view the question in a contractual context and to hold that the case was one of a straightforward relationship of master and servant and that the Director's remedy lay in damages if there is a breach of contract.

40. Mr. Rao then argued that the termination order was not passed by way of punishment and it leaves no scar or stigma on the Director's character. If his reputation is left untainted and untarnished, he argued the Director has no reason to complain. I cannot agree. All the same it was a decision arrived at in defiance of natural justice. The fact remains that without a hearing, the Director was dismissed. It is a cold comfort to the man that no stigma has been attached to him when in reality and substance the order was passed by way of punishment.

41. It was said that opportunity to the Director would not have made any difference to the decision of the Central Government to dismiss him which the Chairman had taken. I repudiate the view that it would have been useless for the Director to show the cause because the Government was sure to decide against him. I see no reason why the Standing Committee as a body and finally the Government to whom the matter has to go for approval, should be assumed to be incapable of giving their honest attention to a complaint of unfairness, or of undue severity, in proposing dismissal and of endeavoring to arrive at the right final decision. There

are examples, as everybody having anything to do with the law knows, of unanswerable charges which, in the event, were completely answered, of inexplicable conduct which are fully explained, and unalterable determination that, by discussion, suffered a change John v. Rees (1970) Ch. 345 per Meggry J.).

42. This case was referred to us. The matter was first heard by Goswamy J. On behalf of the Institute Mr. Rao before the learned judge, as before us, strongly relied upon A. M. Aggarwal v. Union of India (1981) 2 S.L.R. 407. That was a case of an employee of the Steel Authority of India (SAIL). The learned judges (Prakash Narain and S. B. Wad JJ.) held that the employment was contractual and since the contract of employment was terminated in accordance with the conditions of service the question of natural justice did not arise. Consequently the petition was dismissed as not maintainable. On one question the learned judges, however, differed. Narian J. held that SAIL was not a instrumentality of the State. Wad J. took a contrary view. But on the question that the employee could not complain of the breach of natural justice and fundamental rights under the Constitution the two judges were agreed.

43. Goswamy J. apparently disagreed with the decision in A. M. Aggarwal. He thought that in view of Ajai Hashia v. Khalid Mujib 1981 1 L.L.J. 103 and Managing Director U. P. Warehousing Corporation v. Vijay Narain Vajpayee (supra) the case was no longer good law. He also found that in a single bench decision of this court in Amar Nath Bhatia v. Trade Fair Authority (1982) DLT 337 Wad J. himself had taken a view different from what he had expressed in A. M. Aggarwal without referring to the said decision. In Mohd. Abbas Khan v. Bal Bhawan Board (1981) 2 S.L.J. 604 Kirpal J. had taken a view which Goswamy J. found difficult to reconcile with A. M. Aggarwal. Attention of Goswamy J. was called to two other cases of the Calcutta High Court : Central Inland Water Transport Corp. Ltd., v. Prabirendu Sen 1983 1 L.L.J. 374 and Ganesh Chandra Mukherjee v. National Textile Corporation 1983 1 L.L.J. 244, which he thought took a view opposed to that taken in A. M. Aggarwal. In view of this conflict of decisions he referred the matter to a larger bench. This is how the present case has come before us.

44. All these cases, in my opinion, raise a question of administrative law. The respondents were public authorities. The employee held a public position fortified either by a statute or the Constitution. The considerations which determine whether the employees of the 'authorities' have been validly removed from their public position go beyond the mere contract of employment. In public employment the employee is entitled to complain if, whether in procedure or in substance, essential requirements appropriate to his situation in the public service under the instrumentality of the State, have not been observed and, in case of non-observance, to come to the courts for redress by means of a writ petition. The particular principle of administrative law to which he appeals is that, before his dismissal became effective, he ought to have been given an opportunity of making a written representation to or being heard by the authority. If he asks for this opportunity and it is refused the order of dismissal is null and void.

45. What is the test of whether the employee is entitled to a hearing, or to state his case? The test, I think, is the element of public employment. The element of public employment is the differentiating element.

46. The difficulties came from the historical development of the law of master and servant. It has built up not logically but empirically. It is this empirical development which has so often baffled efforts to Systematic the law. A contract of service in the beginning was in a high degree personal and it constituted a personal and private relationship between the parties. There was no public element in this relationship. Then came the public sector and big corporations. The public element at once emerged. The personal element became an impersonal bond of union. The individual who was previously non-public assumed a public character. The private rights and duties were replaced by status. A new test was propounded which focused upon the common quality which unites those within the class concerned and asks whether the quality is essentially impersonal or essentially personal. This was a new trend in public law.

47. In public law the purported exercise of power of dismissal can be declared to be ineffective and inoperative. What the court does is that it quashes a de facto dismissal order which was in law a nullity. The present case can be decided on the

simple ground that there has been a violation of natural justice. Three features of natural justice stand out : (1) a right to be heard by an unbiased tribunal; (2) to have notice of charges of misconduct; (3) the right to be heard in answer to those charges. These three features constitute the irreducible minimum of the requirements of natural justice. Meggery J. called natural justice 'a distillate of due process of law,' a term we find so often on American lips (John v. Rees (1970) 1 Ch. 345. Our constitution does not guarantee right to work, it is true. But it does guarantee that no one shall be deprived of his livelihood under the State, except in accordance with the procedure established by law. There is a perpetual quest for security. The law thereforee has justified the act of dismissal in public employment. It is now a juristic act. (Tony Honore - Quest for Security Hamlyn Lects).

48. The public element in the law of employment brought in legislation and judge-made law. The public corporations and other 'authorities' which are emanations of the State came into existence. In their veins life flows from the corridors of power. These had to be subjected to the rule of law. Their employees needed protection so that these corporations do not become 'citadels of patronage and arbitrary action.' (Vijay Narain Vajpayee (supra) at p. 229).

49. It is in this field of public employment or public sector, as it is sometimes called, that an important role is played by fairness within natural justice, imposing procedural obligations on the decision-maker. The court supervises the administrative authorities. If a breach of natural justice is found the order dismissing the employee is void. The violation of natural justice will render the decision void ab initio. A failure to hear renders the decisions void (See Calvin v. Carr (1980) AC 574). Lord Diplock has recently stated that a breach of the rules of natural justice would render the decision void. (O' Reilly v. Mackman (1982) 3 WLR 1096). The judicial element should be inferred from the nature of the power and its effect on the individual. The applicability of natural justice will be dependent on the nature of the power exercised and its effect upon the individual concerned. (Craig-Administrative Law (1983 ed.) P. 257, 258).

50. In each case the court must examine 'the framework and context of the employment' to see whether elementary rights are conferred on the employee expressly or by necessary implication. In pure master and servant cases the law of contract applies and the principles of administrative law, including those of natural justice, have no part to play. If the dismissal is wrongful, no order for reinstatement can be made, so no room exists for such remedies as administrative law may grant, such as a declaration that the dismissal is void. The servant's remedy lies only in damages. As Lord Wilberforce said in *Mulloch v. Aberdeen Corporation* (1971) AC 1578.

'If there are relationships in which all requirements of the observance of rules of natural justice are excluded, these must be confined to what have been called 'pure master and servant cases' which I take to mean cases in which there is no element of public employment or service, no support by statute, nothing in the nature of office or status which is capable of protection. If any of these elements exist then, in my opinion, whatever the terminology used and even though on some inter parties aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in dismissal being declared to be void.'

51. Two very good illustrations of 'pure master and servant cases' I can give at once are *J. S. girl Rao v. Hind Kusht Niwaran Sangh* 2nd (1982) 2 Del 217 and the case of *Tekraj Vasandi v. Union of India and the Institute of Constitutional and Parliamentary Studies*, C.W. 3809/82 decided on 23rd August, 1983. These two bodies, namely, the Sangh and ICPS, were held not to be 'authorities' within the meaning of Art. 12 and their employees were not held to be entitled to declaration or to reinstatement. Their remedy lay in damages, if there was breach of contract.

52. In cases where there is an element of public employment the court will grant administrative law remedies, such as declaration that the dismissal is void or reinstatement. In these cases the contract plays a secondary role. The law confers a status on the man by reason of the statute. If there is no statute the Constitution protects him. If he holds a civil post he is protected by Art. 311. If he holds a post in the public sector he is protected by Arts. 14, 16 and 21 of the Constitution. No

one can barter away his fundamental rights. It is these rights that he enforces against the State. And if there is a statute he has the stature to protect him. The contract recedes in the background except where there is a special contract for a fixed term.

53. Satish Chandra Anand v. Union of India : [1953]4SCR655 , on which Mr. Rao relies, was a case of a special contract for 5 years. After the expiry of 5 years the Government offered to Anand 'a temporary employment on special terms as opposed to permanent employment.' The court held that the Government was 'free to make special contracts of service with temporary employees, engaged in works of a temporary nature.' This case has no affinity with the present case. With the Director there was no special contract for a certain term. He was appointed on a temporary basis, to begin with. He served the probationary period. On his work being found satisfactory he was made permanent.

54. The ordinary principles of law of contract are subject to the Constitution. The Constitution is the supreme law of the land. A public employment, therefore, has sometimes a statutory flavour and sometimes a constitutional protection.

55. The director's employment in the Institute is sufficiently of a public character to attract appropriate remedies of administrative law. His temporary appointment originated in contract, it is true. But on 31st July, 1978 he was confirmed. He became regular. He was also given an increment on 5th January, 1980. His lien on his old post was terminated in 1978. He held the lien till he was confirmed. As early as 22nd December 1976 at the first meeting of the standing committee it was resolved that until specific rules are framed the rules applicable to Government servants in regard to service conditions like Central Civil Service (Conduct) Rules, 1964, Classification, Control & Appeal Rules, 1965, Leave Travel Concession, Fundamental Rules and Supplementary Rules, Medical Attendance Rules etc., may be made applicable. What began in contract ended in status. (See Roshan Lal v. Union of India, : (1968)ILLJ576SC).

56. It appears to me from the record that the director was holding a substantive permanent appointment which was neither temporary nor officiating nor irregular. He held the post on a regular basis. Such a person has a right to go on in the post

till superannuation until there is something against the man. He has a right to be heard before dismissal. Not only because he is in public employment but also because there are constitutional restrictions on his dismissal. There are statutory rules relating to Government servants which were made applicable to him and these require that a due enquiry according to procedure prescribed must be made before he is dismissed. Reasons will have to be given for the termination order. A dismissal without reasons being given, which vitally affects a man's career or his pension. The director's post is non-pensionable, it is true. But his career was blasted when without reasons he was asked to go with 3 months' pay in his hands.

57. His appointment was no longer contractual. It was one of status protected as he was by the Constitution and the statutory Government servants' Rules. The truth is that in public employment the contract theory has been exploded. Public employment is one field where we can perceive clearly the rise and fall of contract and ultimately 'the death of contract', as a recent writer has suggested. The contract is so much overlaid by the Statute that little remains of the original terms of the contract. Sometimes there is a 'statutory peg' on which to hang the majestic conceptions of natural justice. Sometimes it is the constitutional provision of Art. 21 on which pedestal natural justice is put to mount an attack on arbitrary action. Natural justice, simply stated, is fair play in action. (*Maneka Gandhi v. Union of India*, : [1978]2SCR621).

58. In the constitution of the society of the Institute and the Rules framed for the purpose of its governance the hand of the State is seen everywhere. The prior approval of the Government means that the minister is all powerful. It is there that the power of decision ultimately rests. It was suggested that the Director may be secured an appointment elsewhere on humanitarian grounds after his services are terminated in the Institute. The Minister took a different view. He simply said : 'We are not concerned where he goes. But let him go'. This was his order on 21st August, 1980. On 22nd August, 1980 the director was dismissed. This was naked arbitrariness under the thin guise of contract. As was said in *Ajai Hashia v. Khalid Mujib* (supra). 'Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive, or of an 'authority' under Arts. 12 and 14 immediately springs into action and strikes down State action. In fact the concept

of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the constitution.'

59. The director's dismissal was an unreasoned dismissal. He had protection against unreasoned dismissal. The Constitution and the Government rules afforded this protection. But he was not heard. No opportunity was given. He was not told what was the case against him. He was not asked to state his case. The minister simply said : 'Let him go'. These three words announced his fate. So the appointment came to an end and with it his life's work. His lien on AIIMS had been terminated on being confirmed in the Institute. Now his contract of employment with the Institute was also terminated without assigning any reason. So a professional career was closed.

60. The files shown to us indicate that the petitioner fell foul of O. P. Singh Bhatia. An enquiry was ordered into the affairs of the Institute. But without waiting for the report of the investigating committee the petitioner's services were terminated on the expert advice of Administrative Personnel that the petitioner's appointment itself was ultra-vires. That seems to be the real reason from the file. But it was neither pleaded nor argued before us. So I will not pursue this aspect. On the ground of his unfitness the petitioner's services are stated to have been terminated. But incompetence or unfitness must be enquired into. The petitioner must have an opportunity to controvert it. It was denied to him. The petitioner's purported dismissal on 22nd August, 1980, therefore, was a nullity and I ought so to declare. The result will be that the petitioner is still in office and undismissed.

61. It was said that the petitioner's remedy lay in damages and the writ petition is incompetent. A dismissed employee can file a suit for damages but cannot bring a writ petition, counsel said. In *Mulloch v. Aberdcen Corp.* (1971) 1 WLR 1578, Lord Reid said in categorical terms :

'Then it was said that the proper remedy would be damages. But in my view if an employer fails to take preliminary steps which the law regards as essential he has no power to dismiss and any purported dismissal is a nullity. We were not 'referred to any case where a dismissal after failure to afford a hearing which the law

required to be afforded was held to be anything but null and void.'

62. The power of dismissal vests in the Standing Committee with the prior approval of the Government. They alone can appoint and dismiss the director. They must hear him. A power to appoint implies a power to determine employment (Dr. Bool Chand v. The Chancellor, Kurukshetra University 1968 SLR 119). A confirmed director cannot be dismissed unless there is something against him. In that case he has a right to be heard. (Ridge v. Baldwin (1964) AC 40 per Lord Reid). In my opinion, there are circumstances in this case which elevate the petitioner's position to that of an officer whose tenure of his office or whose status as an officer cannot be terminated without his being given an opportunity to answer any charges made against him or any criticism of him or his conduct.

63. In the counter it was said that the petitioner was orally told of his shortcomings. The petitioner has denied this. In such a serious matter the charge has to be given in writing. The petitioner must be explicitly told the charge against him. He must have an opportunity of answering which he cannot have until he knows what it is. That is only fair. There was adverse criticism of the Director's conduct. There was severe condemnation of his administration. But the crucial fact is that he was not given any opportunity to defend himself. This was contrary to natural justice.

64. How can any responsible body of men reach a fair decision without hearing, him. I find the right to be heard clearly given to him in the circumstances in which he was appointed and continued in the post. If the right to be heard is denied to him, he can have the decision declared void. The writ is a competent preliminary to the launching of proceedings by the dismissed employee in such a case. The result is that I must quash the termination order dated 22nd August, 1980 and declare that the Director legally continues in his appointment with salary and other benefits to date.

65. In the case of SAIL it is difficult to hold that the employee's case rested in contract and that he could not complain if the termination of employment was made in accordance with the contract. In recent years the law has undergone a profound change. The vice in A. M. Aggarwal's case is that it has not followed nor noticed the two landmark decisions of the Supreme Court - Ajai Hashia (supra)

and Vijai Narain Vajpayee (supra) - which have opened new horizons in administrative law. As was said in Ajai Hashia, the test is whether it is an instrumentality or agency of the Government and not as to how it is created. Applying this test SAIL must be held to be an 'authority'. If this is so the whole scene changes. The employee is entitled to the constitutional protection. The 'authority' is subject to the same basic obligation to obey the fundamental rights as the Government (Ajai Hashia).

66. The other weakness in the decision of A. M. Aggarwal is that in the main it followed the case of Dr. Y. P. Gupta v. Union of India (1975) 2 SLR 560. And Y. P. Gupta's appeal was allowed by the Supreme Court and the judgment of five judges of this Court was set aside (See Dr. Y. P. Gupta v. Union of India (1984) I.C. 301). A. M. Aggarwal is also based on V. P. Malhotra v. State Bank of India I.L.R. (1974) Del 660 which was followed in Y. P. Gupta v. V. S. Deshpande J. who spoke for the bench for five judges referred to his own previous judgment in V. P. Malhotra with approval.

67. In view of the fact that this court's decision in Y. P. Gupta has been reversed on appeal by the Supreme Court the authority of V. P. Malhotra has been completely shaken. In my respectful opinion A. M. Aggarwal is no longer good law in view of the three Supreme Court decisions in Ajai Hashia, Vijai Narain Vajpayee and the Y. P. Gupta. It is true that some of these Supreme Court decisions came after the pronouncement of the judgment in A. M. Aggarwal but we cannot follow it as it is out of line with the latest trend of authorities.

68. I would respectfully but firmly disagree with the decision in A. M. Aggarwal in view of the latest pronouncement of the Supreme Court in Dr. Y. P. Gupta on which A. M. Aggarwal is wholly based. In any opinion, it is not necessary to refer this case to a larger bench because we are compelled by the Constitution to follow the law laid down by the Supreme Court. That is the law of the land. And the Supreme Court has left us in no doubt that A. M. Aggarwal was wrongly decided. If a decision of this court is inconsistent with the Supreme Court's view it cannot be followed. Even though not overrule it cannot be accepted as a binding authority. The reason is that law does not stand still. It is always in motion. A decision given

today is obsolete tomorrow. The law is changing. I am therefore of opinion that A. M. Aggarwal is no longer good law.

69. The proper approach to the question at issue in this. The society is a domestic body. It has a domestic code. It is governed by domestic rules. Under the Rules, the Director is the employee of the Standing Committee. He is not the servant of the Chairman. Nor of the Minister. He is not dismissable at the pleasure of the Minister. The Standing Committee is given the power, with the prior approval of the Government, to appoint and dismiss the Director. The Standing Committee is the employer of the Director. They have to be satisfied of the performance by the Director of his functions and duties as an officer of the Institute. So to be competent effectively to dismiss the Director the Standing Committee had first to reach a conclusion that the Director's performance had been unsatisfactory. This is clearly a decision of a quasi-judicial kind and on which the Standing Committee could not reach without letting the Director know in what respects his conduct was considered to have been unsatisfactory and in what was he was found to be unequal to the post. For this he was entitled to be given an opportunity to explain his conduct and but his own case. In other words the case was one of a kind to which the principle of natural justice which is expressed in the maxim 'audi alteram partem' applies.

70. The matter of unsatisfactory performance required investigation by the Standing Committee on which the Director ought in fairness to have been heard and allowed to give his Explanationn and put his case. From first to last the petitioner did not have such an opportunity. He was not given an opportunity of being heard or of giving an Explanationn or putting his case. The decision to dismiss is, therefore, vitiated by disregard of the basic requirement of natural justice. Such a decision should be treated as being and as having always been ineffective.

71. The termination order dated 22nd August, 1980 was, in my judgment, a nullity ab initio because on the proper construction of Rule 10.1(iv) the power of dismissal conferred by that Rule on the Standing Committee was only exercisable if the Standing Committee was dissatisfied with the Director's conduct. The

Standing Committee could not be said to be so dissatisfied until they had properly investigated the Director's conduct. This could not be until they had given him an adequate opportunity to defend his conduct. This he did not have. So the Standing Committee's power of dismissal under Rule 10.1(iv) had not been effectively exercised. (See : *Stevenson v. United Road Transport Union*, (1977) 1 All E.R. 941. Cf. : *R. V. British Broadcasting Corp. Ex parte Lavelle* 1983) 1 All E.R. 241.

72. The petitioner has relied on the bad 25 personal relations with O. P. Singh Bhatia who initiated the proposal of his dismissal. From the files it appears that the objection is not entirely without substance. But I will not dilate on this aspect further because I am putting my decision on legal grounds and not on factual mala fides.

73. So the conclusion I come to is that the termination order dated 22nd August, 1980 was in breach of the Rules, in breach of natural justice, ultra virus and null and void.

74. Mr. Rao's refrain was the contractual nature of the appointment. In the last decade or so, the rate of changes has been such that the classical law of contract no longer accords with the fact of the modern world in public employment relationship. In labour law the contract has been banished. Statutory intervention has reduced the contract law to a vanishing point. In the public sector have appeared large conglomerate organisations, enormous in power and influence, which employ hundreds and thousands of people. The State is the biggest employer. Here too the law of contract is a fiction.

75. The expulsion of contract law as the regulator of such employment relationship does not necessarily mean that such bodies operate in a legal vacuum. Individuals whose rights are affected can seek redress in courts. In court lawyers classify these cases as involving questions of Administrative Law. The procedure to be followed and the law to be applied, is then quite different from those governing contractual disputes. The whole conceptual apparatus of the lawyer changes as he moves from private to public law, from contract to administrative law. (P. S. Atiyah - *Rise and Fall of Freedom of Contract* P. 719 : Also see *Death of Contract* by Prof. Grant Gilmore).

76. A public authority cannot hire and fire a man without following the procedure to be observed. It can act within the restraints imposed upon it. In public law the courts exercise the power of surveillance on arbitrary or capricious action of the decision maker. Certiorari is issued to quash the decision. But 'Certiorari is not an appellate power'. It means that public bodies must be kept within bounds and if they step outside the limits set by law the courts will set aside their decision.

77. The decision is between private and public relationship. It is the same as in private and public law. In private relations the law of contract governs. The administrative law has injected into the contract of employment some of the notions unknown to the law of contract, for example, natural justice, fairness, freedom from bias, reinstatement. The public law compels the employer to formulate his reason for dismissing and to be prepared, if necessary, to defend them. It was a great advance when employers were compelled by law to give reasons for dismissing employees and if challenged to defend those reasons. This means the employee cannot be arbitrarily dismissed. Unjustified dismissal is ineffective. Reinstatement is the remedy. A reinstated employee must be treated in all respects as if he had not been dismissed. This was a major breakthrough. All this shows that the classical theory of contract is playing a declining role in the field of public employment.

78. More generally, the modern relationship of employer and employee is much less personal than the old relationship of master and servant was believed to be. Today in public employment the law plays so large, and the contract of the parties so small, a part that it becomes doubtful whether the relationship can still be called contractual. The agreement of the parties creates a status whose legal incidents are fixed by law. The contractual basis of employment is there, but it has almost reached vanishing point. It is no longer a relationship of ordinary master and servant in which the rights of the parties were regulated solely by contract. The modern relationship of employer and employee has a strong statutory flavour and/or a constitutional protection which cannot be varied by the parties at all. (See *Chief Constable of the North Wales v. Evans* (1982) 3 All E.R. 114).

79. Take this very case. Here the State is the employer. The prior approval of the Central Government is of paramount importance in appointment and dismissal of the Director. The Standing committee is given the power to dismiss with the prior approval of the Government. But the Chairman took a convenient course. He himself passed the termination order. He did not bring the matter before the Standing Committee. He simply took the approval of the minister bypassing Standing Committee. It may be a convenient method but not legal and just. 'Convenience and justice are often not on speaking terms' General Medical Council v. Spackman (1943) AC 627 per Lord Atkin).

80. It was then said that the Chairman had power to take 'emergent action'. This argument must be dismissed on the short ground that the director's continuance in the Institute did not create an abnormal state of danger which alone can justify an 'emergent action'. There was neither danger nor suddenness which constitutes a state of emergency.

81. The Standing Committee did not hear the Director. There was no reason for not giving him a full and fair opportunity of stating his case. First he ought to have been informed of the charge against him. Then he should have been given a full and fair opportunity of being heard. The Standing Committee is not required to conduct itself as a court. All that it means is that there has to be a due enquiry by the Standing Committee where the director has a fair opportunity of meeting the case against him. They are the deciding body and not the Chairman. As Lord Wright has said :

'If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice, the decision must be declared to be no decision.'

General Medical Council v. Spackman (supra) at p. 644-645).

82. This is not a case of pure master and servant relationship. I cannot better the language of Salmond when he says :

'In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.'

(Salmond and Williams on Contract 2nd ed. p. 12. Quoted by Supreme Court with approval in Roshan Lal v. Union of India (supra).

83. Now the relationship of employer and employee in the public sector is of a public law character. 'A dismissal may be unfair either because it is procedurally arbitrary or because it lacked good cause'. (Craig - Administrative Law (1983 ed.) p. 282).

84. It was said that this is a case of contract. This is not so. It was then said that 'emergent action' was taken. This is all wrong. The Director was not a danger. And much less an immediate danger calling for an 'emergent action'. It was next submitted that there were 'shortcomings' in the Director. What are they Was he asked to explain

85. In an eloquent passage Chinnappa Reddy J. said that if the public sector organisations are not governed by rule of law they will become citadels of patronage and arbitrariness. This will be making a mockery of the republican constitution, he said (Vijay Narain Vajpayee (supra)).

86. Lastly Mr. Rao urged that if we were minded to reinstate the director we should not award arrears of salary to him. In this connection he relied upon the observations of the Supreme Court in Vijay Narain Vajpayee (supra). That was a case of a workman. This is a case of a Director. He is not a workman. It is indeed cold comfort to the man if he is reinstated but not paid past salary. Such an argument is based on a misunderstanding of the real nature of the remedy of reinstatement. The petitioner will be deemed to be in employment as if he had never been dismissed. He will get all arrears of salary and other benefits.

87. For these reasons the termination order dated 22nd August, 1980 is set aside and quashed. The Director is reinstated in his post. He will be entitled to his salary and other consequential benefits from the date of the termination order. For such period as he remained in employment elsewhere he will not get full salary but such

salary as is found due after deducting what he has received in employment. He will also be entitled to costs of the petition.

88. Writ Petition allowed.

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