6. It may also be added that the order was received by the Estate Office on 15th November and thereafter one plot on Madhya Marg in Sector 7C was reserved for the petitioner. The affidavit of Shri Radha Kishan Kapur shows that sites Nos. 17 to 44 in Sector 7-C on Madhya Marg had already been created and out of these only those bearing numbers 17 to 26 had been released and auctioned. Out of the remaining plots, plot bearing number 27 which is the next to the ones which had been auctioned has been reserved for the petitioner. This being the position, it would be safe to come to the conclusion that there was no intention on the part of the respondent to disobey the order of the High Court. In fact, the fact that immediately after the receipt of the order the plot situated next to the plots auctioned was reserved would show that the order had not been received earlier as there is not much difference between plots numbers 26 and 27. If plot bearing number 27 could be reserved so could any of the other plots if the order had come to the notice of the respondent in time.

7. As a result of the above discussion, I find that there is no material to hold that respondent had come to know of the order and had intentionally disobeyed it. I, therefore, dismiss this petition and discharge the rule against all the respondents.

N. K. S.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

DR. B. R. CHAUHAN,—*Petitioner.*

versus.

THE PANJAB UNIVERSITY AND OTHERS,—*Respondents.*

Civil Writ No. 1589 of 1969.

October 30, 1969.

Panjab University Calendar (1968), *Volume I, Chapter III—Regulation 2—Appointment of Professor or Reader under—Senate—Whether has authority to impose condition of probation—Such condition if imposed—Whether arbitrary—Terms and conditions of contract of service regulated by the rules of a statutory corporation—Such contract—Whether can be enforced in a Court of law.*

Held, that service is initially a matter of contract and the period of duration of service is also to be settled by a master and his servant. According to the ordinary rule of law, a master has an inherent right in the absence of a contract to the contrary, to terminate the services of his employees if not found fit to meet certain requirements and does not come to a standard expected of him. It makes no difference whether the employer is a corporate body or a private individual. An employee cannot insist on his employer that he must continue to serve, no matter that on trial he is found to be unsuitable for the job given to him. The rule of law is not different in the case of appointment of a Professor or Reader by a University unless any statute or a rule having the force of law denies such a right to the employer. The Regulations relating to conditions of service of Professors and Readers do not create any such bar in the way of the University. Special rules as contained in Regulation 2 in Chapter III of the Panjab University Calendar, Volume I, 1968 Edition, supplement with regard to a few matters only the general rules governing the terms and conditions of officers of Class A, and one of them being that the Senate can impose any terms and conditions. No conflict arises between two sets of rules, if the Senate which is the supreme authority under the East Panjab University Act, and has power under the statutory Regulations to prescribe the terms and conditions of service of Class A officers, imposes a condition of probation before the regular appointment as contemplated in Regulation 2(i) takes effect and the employee becomes entitled to the benefits available to him as a regular employee of the University in the Class. In the absence of a direct enabling provision or, in other words, when there is no rule about the condition of probation in the service Regulations, the Senate is not prevented from imposing such a condition in the exercise of its executive power, while employing any person in its service whether as a Professor, Reader or in any other capacity. The imposition of a condition of probation cannot be considered to be unreasonable or arbitrary exercise of power by the Senate or indeed by any appointing authority.

(Para 7).

Held, that a contract of service is one which cannot be specifically enforced in a Court of law. It makes no difference whether a regular suit is filed in a civil Court or releif is sought from a High Court in the exercise of its extraordinary jurisdiction by issue of an appropriate writ or direction. No writ or direction can be issued to impose the services of an employee on an unwilling employer. Remedy for wrongful dismissal or for breach of any of the terms of the contract, no matter they relate to the terms and conditions of service, is only by way of an action for damages. In case of a corporation created by a statute, terms and conditions of service of an employee are sometime regulated by rules. The fact of such terms and conditions having been provided for by the rules makes no difference and they nontheless constitute only the terms and conditions of service. If the same conditions had been laid down under an agreement with the employer, the remedy would have been only by way of a suit for damages for their breach and the mere fact that they have been provided for in the rules made under a statute it does not make any basic change in the respective rights of

the parties or in the matter of remedies to be pursued. However, when statutory status is given to an employee and there is a statute which casts certain obligations on the employer, it is only when those obligations are not performed and there is violation of the provisions of a statute that an employee gets a right to obtain a declaration that the order terminating his services is void and ineffective in law and that he still continues in service. When such is the case, even a writ in the nature of *mandamus* may be issued directing the employer to act according to the statute and reinstate the employee. (Paras 9 and 10).

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the decision of the Syndicate of the Panjab University taken in its meeting held on 21st of June, 1969 and communicated to the petitioner,—vide *Endst. No. 9898-VJJ/Estt., dated 21st June, 1969 and that of the Senate dated 27th July, 1969.*

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the petitioner.

RAJINDER SACHAR AND RAJ KUMAR AGGARWAL, ADVOCATES, for respondents Nos. 1 AND 2. J. N. KAUSHAL, ADVOCATE, for respondent No. 3.

JUDGMENT

This writ petition is directed against the decision taken by the Senate of the Panjab University respondent on 27th July, 1969, whereby the petitioner was not confirmed as the Professor and Head of Department of Laws in the said University and the post was to be advertised. The respondent University is constituted under the Panjab University Act, 1947, as amended up-to-date (hereinafter called the Act). The University is a body corporate.

(2) The petitioner, Dr. B. R. Chauhan, joined this very University in 1954 as Lecturer in the Department of Laws and was then promoted as Reader in the year 1963. On the retirement of the then Professor and Head of the Department in the year 1968, the post was advertised. A copy of the advertisement is Annexure R. 6 with the written statement of respondent 1. Applications were invited for the post in the grade of Rs. 1,100—50/1,300—60—1,600 with benefit of provident fund on confirmation. It was mentioned in the advertisement that candidates would be interviewed by the Selection Committee and that appointment would be on one year's probation in the first instance starting from 1st April, 1968. The petitioner was one of the applicants who, after being interviewed

by the Selection Committee on 2nd June, 1968, was selected for the post. The Syndicate in whom the executive Government of the University vests under section 20 of the Act recommended to the Senate, in terms of the report of the Selection Committee, that the petitioner be appointed as Professor and Head of Department of Laws in the grade of Rs. 1,100—50/1,300—60—1,600 on a year's probation. It was also recommended that the petitioner be asked to take charge of the department immediately subject to the approval of the Senate, and the Vice-Chancellor be authorised to look into the claims of the petitioner in order to fix his salary suitably in the said grade.

(3) Since there was no one holding charge of the department at that time, the Vice-Chancellor respondent asked the petitioner to assume his new duties immediately, with effect from 24th June, 1968, in anticipation of the approval of his appointment by the Senate. A copy of this letter is Annexure 'B' with writ petition. The recommendation of the Syndicate was put up on 26th July, 1968, before the Senate, which is the Supreme authority of the University, and also the appointing authority. A copy of the agenda for the meeting of the Senate fixed for 26th July, 1968, as circulated to the members, is Annexure R-11. There were several items in the agenda and item No. 33 related to the appointments of various persons in different posts and pay scales, the petitioner being one of them and his name appears at serial No. 15 in that item. The Syndicate proceedings which formed a part of the agenda were divided into different paras. It appears that procedure of the University is that against each item to be considered by the Senate a brief reference is made to the subject-matter of that item and attention of the Senators is invited to the relevant para of the Syndicate proceedings so that they can know what are actually the recommendations. The respective paras are read and placed for approval before the Senate. Whenever the Senate does not approve of the contents of any para or part thereof, it is specifically so stated in its resolution. The procedure required to be adopted at a meeting of the Senate is given in statutory Regulations contained in Chapter IV of the Panjab University Calendar, 1968 Edition, Volume I. All motions are to be moved and seconded but proposals submitted by the Syndicate and entered upon the notice of the meeting, which in other words is the agenda, are by themselves treated as motions without the necessity of being proposed and

seconded. A copy of the Senate proceedings of 26th July, 1968, has been filed as Annexure R-12 with the written statement of respondent 1 and it is a voluminous document. There are several paragraphs and in paragraph XVII thereof, there are items 26 to 46, item No. 33 relating to various appointments and petitioner's case appears at serial number 15 under the said item. We have it in these proceedings that items 26 to 46 were read out and unanimously approved. As to what proposals of the Syndicate were being approved, a reference in this connection is also made to the respective paras of the Syndicate proceedings. In the case of the petitioner, para 13 is relevant and is referred to at serial number 15 of item 33 and it embodies the recommendation of the Syndicate that the petitioner be appointed on one year's probation in the grade of Rs. 1,100—50/1,300—60—1,600, and the Vice-Chancellor authorised to look into the petitioner's claim and fix his salary suitably in this grade. In pursuance of the senate resolution, letter of appointment, Annexure R-13, dated 28th December, 1968, was issued from the Finance and Development Officer of the University addressed to the petitioner, by which the latter was informed, giving reference to his application, that the Senate at its meeting held on 26th July, 1968, had approved of the petitioner's appointment as Professor and Head of the Department of Laws on a starting salary to be fixed by the Vice-Chancellor, and that the appointment was to be on one year's probation. It was also said in the letter that the appointment would be governed under the rules and regulations of the University.

(4) The petitioner continued to work as Head of the Department till the Syndicate at its meeting held on 21st June, 1969, recommended to the Senate that the petitioner be not confirmed in his post as Professor and Head of Department of Laws and the Vice-Chancellor be authorised to make acting arrangements in anticipation of the Senate's approval. The Vice-Chancellor appointed Shri E. H. Banerjee, respondent 3, who was already a Reader in the Department, as the acting Head of the same Department. The matter then came before the Senate in its meeting held on 27th July, 1969, when the Syndicate's recommendations were approved by an overwhelming majority in which only four out of seventy-one members present voted against the proposal of the Syndicate with the result that the petitioner was not confirmed. Hence the present writ petition.

(5) Mr. Anand Sarup, learned counsel for the petitioner, has raised the following contentions :—

(1) That the Senate did not in fact appoint the petitioner on probation though the recommendation of the Syndicate was to that effect and it is so borne out from the Senate resolution of the relevant date.

(2) That there are special statutory Regulations made under section 31(2)(e) of the Act and published in Chapter III, Part C, of the Panjab University Calendar, 1968 Edition, Volume I, and that they form a complete code in the matter of appointment of Professors and Readers of the University. It is urged that an appointment could be made only under these Regulations which do not provide for an appointment on probation and the Senate did not, therefore, intend to act contrary to such Regulations having the force of law, and it could not indeed legally do so nor could it be deemed to have intended to do so by making an appointment not covered by the said Regulations. According to the learned counsel, appointment on probation is a separate class by itself as distinguished from two types of appointments permissible under rule 2(i) of the said special Regulations. According to the learned counsel the idea of an appointment on probation is completely excluded by these special Regulations.

(3) That the condition as to appointment on probation should be held to be void and the appointment must legally be treated as having been made without time limit upto the age fixed for retirement. The order refusing to confirm the petitioner is, thus, illegal and without jurisdiction.

(4) That action of the Senate refusing confirmation of the petitioner being illegal and without jurisdiction, contrary to the special statutory Regulations, the petitioner is entitled to relief by way of reinstatement to the post of Professor and Head of Department of Laws from which he could only be removed for misconduct or incapacity as provided for in Regulation 2(iv).

(6) I may now proceed to deal with the respective contentions. The first contention is without substance and must be repelled. The documents on the record and the conduct of the petitioner himself leave no manner of doubt that the appointment of the petitioner was made on probation for one year in the first instance. It is not disputed that the Selection Committee recommended that the appointment be on probation and the recommendation as such was adopted by the Syndicate which considered the same in its meeting on 22nd June, 1968. The whole dispute is as to what was decided at the Senate meeting. It is conceded before me that the petitioner was present in the meeting of the Senate, representing the Law Department of which he was already holding the charge in pursuance of the Syndicate decision of 22nd June, 1968. He was later issued a formal letter of appointment as well under the signatures of the Finance and Development Officer of the University in which it was also communicated that the appointment would be on one year's probation. If the facts were otherwise and the appointment was really not on probation, the first reaction of the petitioner, as a reasonable man, would have been to protest to the University that it had been wrongly stated in the said letter (Annexure R-13) that he was to hold the appointments on one year's probation. It is inconceivable that the petitioner who is a highly educated person, conversant with law, did not understand the import of the expression 'probation' as used in the letter and could not realise that he might not be confirmed on the expiry of one year. Mr. Anand Sarup submits that the conduct of the petitioner is not relevant and he could simply ignore that part of the letter which related to probation, since no such condition could be legally imposed by the Senate. I am afraid this contention too is devoid of force. When the intention of the Senate has to be ascertained, all the documents and circumstances including the previous or subsequent conduct of the petitioner, more so when he was present in the meeting of the Senate are most relevant. The learned counsel mainly, in this connection, relied on sub-item 15 of item 33 in the Senate proceedings (Annexure R-12) where no specific mention is made about the appointment having been made on probation in the first instance. A copy of these proceedings has also been filed by the petitioner as Annexure 'C' but the strange part of it is that in this copy there is omission of the reference to paras 12 and 13 of the Syndicate proceedings of 22nd June, 1968, where it is clearly stated that the appointment was to be on probation. The learned counsel for the respondents vehemently urged that the omission by the petitioner was intentionally made in order to give an impression

to this Court that the appointment was not on probation, since he very well knew that in paras 12 and 13, which were approved by the Senate, there was a clear mention of the appointment of the petitioner being on probation. Be that as it may, the fact remains that in the Senate proceedings, a mention is made of para 13 of the Syndicate minutes relating to the petitioner, wherein the fact of appointment of the petitioner being on probation, was clearly stated and all these proceedings were read out and unanimously approved by the Senate. It is also corroborated by the conduct of the petitioner who raised no objection to the letter Annexure R-13 incorporating this condition. Of course none of the Regulations pertaining to any class of service under the University contains any specific rules providing for appointment on probation but as stated by the respondents in para 8 of their return, to which there is no rebuttal, the practice of the University has always been to make all appointments on one year's probation, unless the appointing authority decided otherwise. It was in this context that the respondents have placed on the record Annexure R-7, an extract from the relevant paragraph of the Senate proceedings showing that the usual requirement of one year's probation was waived in the case of one Dr. Chhabra who was appointed as Professor of Ancient Indian History and Culture on 4th December, 1965, and it was specifically so stated. In Annexure R-7, the expression used is "*usual requirement* of one year's probationery service..... .....be waived". The petitioner himself was appointed as a Reader on probation and his probationary period was, on the recommendation of the then Head of the Department, extended by one year. The Regulations for the appointments of Professors and Readers are the same. If the petitioner could not be appointed on probation as a Professor, he could also not be so appointed as Reader but both the times he accepted the appointments as such. A mountain is being made of a mole hill in the ingenious argument adopted by the learned counsel in raising a question of fact about the existence of which there cannot be any doubt on the present record. The argument of Mr. Anand Sarup is that reference to paras 12 and 13 was only to show that proposals as stated in those paras were submitted by the Syndicate and that they did not formally require to be proposed and seconded as envisaged in Regulation 14 of the Regulations relating to the procedure to be followed in the meetings of the Senate. It may be so but this argument does not take notice of the fact that under the main item XVII in Senate proceedings it is stated that the proposals of the Syndicate covered by items Nos. 26 to 46 which included the item relating to the petitioner, were read out and unani-

mously approved by the Senate. In my opinion, it is established beyond any doubt that the Senate adopted the entire proposal of the Syndicate including the condition regarding probation. It must, therefore, be held that the petitioner was appointed on probation for one year.

(17) The next contention on behalf of the petitioner is also misconceived. To regulate appointment, conditions of service, etc., of officers and servants of the University, Regulations have been made under section 31(a), (e) and (f) of the Act and they are to be found in Chapter IV, Part C, of the University Calendar, 1968, Edition, Volume I. For the purposes of these Regulations, the employees are classified into three Classes, A, B and C. A Professor is a 'Class A' employee. Regulation 4 is in the following terms:—

> "4. Save as may be otherwise provided in the Regulations, the fixation of salary and the conditions of service of every employee shall in the case of—
>
> (a) Employees of Class A—rest with the Senate;
>
> (b) Employees of Class B and C—rest with the Syndicate.
>
> The Senate or the Syndicate, as the case may be, shall have the power to sanction a higher start than the minimum of the grade, accelerated increment, allowance, etc., as it deems fit."

In the case of Registrar and other administrative officers, supplementary Regulations are to be found in Chapter I of the University Calendar, whereas those relating to Professors and Readers of the University are contained in Chapter III thereof. Regulation 2 of Chapter III alone is relevant and it reads as under:—

> "2. The following special rules relating to conditions of service apply in the case of Professors and Readers of the University:
>
> (i) The apointment may be made for an initial limited period or it may be made without time-limit up to the age fixed for retirement.
>
> (ii) Where the Senate has decided to retain a Professor or Reader after an initial period of appointment, without

specifying a further period, the reappointment shall be without time-limit up to the retiring age.

(iii) Where an appointment is made for an initial period, the Senate shall consider not later than 31st March, preceding the end of such period the question of the continuance of the appointment and the appointment shall not lapse at the end of that period unless the Senate shall have so decided not later than March 31st preceding; and failing such notice the appointment shall be deemed to be renewed for one further year as from the end of the initial period with notice that it will lapse at the end of such further year.

(iv) In case of misconducted or incapacity of a Professor or Reader, the Senate shall have power to remove him from office on the recommendation of the Syndicate, provided that two-thirds of the members of the Senate present at a duly convened meeting of the Senate vote for his removal. This provision shall also apply in the case of a Principal of a University College.

Subject to the provisions contained in this Chapter, the conditions of service of Professors and Readers of the University shall be the same as of other officers of A Class."

The appointment of a Professor or a Reader can be made for an initial limited period or without time limit up to the age fixed for retirement. There are thus two classes of appointments amongst Professors and Readers, namely, (1) where the period for which appointment takes effect is limited, and (2) a regular appointment which extends up to the age fixed for retirement. As conceded before me by the learned counsel for the parties, it is their common case that the appointment of the petitioner was not made for an initial limited period. The only type of appointment that could, therefore, be made was without time limit up to the age fixed for retirement and Mr. Kaushal, learned counsel for respondent 3, admits that the intention of the University was to appoint the petitioner without a time limit but subject to his having been found suitable after trial on probation for one year. The question that arises for determination therefore, is whether it was open to the University to make a regular appointment without time limit as contemplated in Regulation

2(i) by employing the petitioner in the first instance on probation. The contention on behalf of the petitioner that the appointment on probation is a class by itself and not covered by Regulation 2(i) cannot be seriously urged or entertained. Mr. Anand Sarup, because of the omission of an enabling provision to that effect in the Regulations, wants Regulation 2(i) to be read as indicating that no Professor or Reader can be appointed on probation. Service is initially a matter of contract and the period of duration of service is also to be settled by the master and servant. According to the ordinary rule of law, a master has an inherent right in the absence of a contract to the contrary, to terminate the services of his employee if not found fit to meet certain requirements and does not come to a standard expected of him. It makes no difference whether the employer is a corporate body or a private individual. An employee cannot insist on his employer that he must continue to serve, no matter that on trial he is found to be unsuitable for the job given to him. The rule of law cannot be different in the case of appointment of a Professor or Reader unless any statute or a rule having the force of law denies such a right to the employer. The Regulations relating to the conditions of service of Professors and Readers do not create any such bar in the way of the University. Special rules as contained in Regulation 2, referred to earlier, supplement with regard to a few matters only the general rules governing the terms and conditions of officers of Class A. one of them being that the Senate can impose any terms and conditions. In my opinion, no conflict arises between these two sets of rules, if the Senate, which is the supreme authority under the Act and has power under the statutory Regulations to prescribe the terms and conditions of service of Class A officers, imposes a condition of probation before the regular appointment as contemplated in Regulation 2(i) takes effect and the employee becomes entitled to the benefits available to him as a regular employee of the University in this Class. To put it differently, in the absence of a direct enabling provision or, in other words, when there is no rule about the condition of probation in the service Regulations, the Senate is not prevented from imposing such a condition in the exercise of its executive powers, while employing any person in its service whether as a Professor, Reader or in any other capacity. The decision of their Lordships of the Supreme Court in *B. N. Nagarajan and others* v. *State of Mysore and others* (1), can be legitimately pressed into service in support of this view. There were no rules

(1) A.I.R. 1966 S.C. 1942.

made by the Governor of Mysore State in exercise of his powers under Article 309 of the Constitution of India, in regard to the appointments of Assistant Engineers, but the State Government made appointments. It was held that making of rules of recruitment was not absolutely necessary before a service could be constituted or a post created or filled and that the State Government in exercise of its general executive powers could make the appointments provided the procedure adopted by it did not infringe Articles 15 and 16 of the Constitution of India. In the circumstances of the instant case, by adopting the reasoning in *Nagarajan's case* (1), it can be similarly said that the want of a rule about any particular condition of service cannot stand in the way of the Senate imposing such a condition when taking a person in its service. By no stretch of imagination, the imposition of a condition of probation can be considered to be unreasonable or arbitrary exercise of power by the Senate or indeed by any appointing authority. In spite of there being no provision in any of the service Regulations for appointment on probation the idea of appointment on probation is not foreign to University appointments. There are stated in Chapter IV general conditions of service etc., of officers and servants of the University and Regulation 45 thereof while laying down a rule regarding contribution to be made by an employee towards the provident fund, has a proviso appended thereto which reads as follows:—

> "Provided that in the case of persons appointed on probation, the University contribution shall be placed to their credit on confirmation from the date of their appointment."

The word "active service" has been defined in Regulation 2(iv) of the same Regulations and it means, amongst other things, the time spent on duty. The word "duty" includes service as a probationer or apprentice provided that such service is followed by confirmation without a break. A Professor who is the Head of the Department has not only to make a contribution towards the advancement and diffusion of knowledge, but has to show a capacity for organisational and administrative work as a head of the institution. It could not possibly be intended in the absence of a clear statutory bar that it is not open to the University respondent to try a person in the job to be assigned to him. It is only after cosfirmation that the services of a Professor or a Reader cannot be terminated except for his proved misconduct or incapacity. I consider it to be a startling proposition

that though the petitioner was appointed on probation and he accepted the appointment, he could not still be appointed as such and that his appointment be treated to be valid up to the age of his retirement, no matter whether he is confirmed or not. The contention of the learned counsel that the Regulations do not permit appointment of a Professor on probation must, therefore, be repelled.

(8) The contention that in spite of the petitioner having accepted the appointment on probation, the condition regarding probation be treated as a nullity has, as already stated, no merit. Assuming for the sake of argument that there was some merit in this contention, the conduct of the petitioner is such that he is not entitled to any relief from this Court in the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. There are no equities in favour of the petitioner and it is a well-established rule that a person cannot be allowed to both approbate and reprobate. The petitioner was appointed as Reader on probation under the same Regulations under which he was appointed as Professor. The advertisement issued by the respondent University clearly laid down that the appointment was to be on probation for one year in the first instance and the petitioner applied in pursuance of that advertisement. The Selection Committee recommended the appointment of the petitioner on probation and the same recommendation was adopted by the Syndicate and the Senate. A letter of appointment was issued to the petitioner clearly stating that his appointment was on probation for one year but the petitioner never raised any objection to this condition having been imposed on him. He stood on the fence taking his chance for confirmation but when the same was refused he turned round and started putting up a baseless plea urging that his appointment was in fact not on probation and that he could not legally be so appointed. This Court will no doubt advance the rule of law but at the same time relief under Articles 226 and 227 of the Constitution is also an equitable one. Whosoever asks for such a relief must come with clean hands which I am afraid is belied by the conduct of the petitioner. No injustice much less manifest injustice can be said to have been caused to the petitioner in such circumstances. It may be that he felt hurt because of his confirmation having been refused without assigning any reasons. This Court cannot sit in appeal over the judgment of the University authorities when no legal right of the petitioner has been infringed. He did not have any legal right to be confirmed, nor was he entitled to be communicated reasons as to why it was not being done.

(9) The only contention that survives for consideration is whether the petitioner can claim relief by way of reinstatement to a post in which he has not been confirmed. No such question really arises in view of my findings on other contentions, but as the point was debated at length, I feel it necessary to express an opinion on this aspect of the case as well. The relationship of the respondent University with the petitioner was undoubtedly that of master and servant. Every such relationship has to originally start with an agreement which must be enforceable in law or in other words a valid contract. The master may be an individual or an association of persons unregistered or registered under any statute. Corporation which is the creature of statute is as much a master as any one else and the relations with its employees are nonetheless that of a master and servant regulated by the terms of the contract under which this relationship was brought into existence. There are contracts which can be specifically enforced whereas there are others of which performance cannot be claimed and a contract of service is one which cannot be specificially enforced. It makes no difference whether a regular suit is filed in a civil court or relief is sought from a High Court in the exercise of its extraordinary jurisdiction by issue of an appropriate writ or direction. No writ or direction can be issued which is opposed to the general rule of law and the same being that it is not open to the Courts normally to impose the services of an employee on an unwilling employer. Remedy for wrongful dismissal or for breach of any of the terms of the contract, no matter they relate to the terms and conditions of service, is only by way of an action for damages. In case of a corporation reated by a statute, terms and conditions of service of an employee are sometime regulated by rules. The fact of such terms and conditions having been provided for by the rules makes no difference and they nonetheless constitute only the terms and conditions of service. If the same conditions had been laid down under an agreement with the employer, the remedy would have been only by way of a suit for damages for their breach. The mere fact that they have been provided for in the rules made under a statute does not make any basic change in the respective rights of the parties or in the matter of remedies to be pursued.

(10) It is a settled rule of law that the service of the employee is at the pleasure of the master. Even a person in service of the Union or a State holds office during the pleasure of the President or the Governor, as the case may be. Public servants holding civil posts in the Union Government or under a State have, of course, been

guaranteed safeguards. In the case of such a public servant, the only protection is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed nor shall he be dismissed or reduced in rank except after an enquiry giving him a reasonable opportunity of being heard in respect of those charges for which he is sought to be punished. This limited guarantee to a public servant does not change the general rule of law which enjoins upon Courts not to foist the personal services of an employee on his employer. The only well-recognised exceptions to this rule are when,—

(1) a public servant has been dismissed from service in violation of the guarantees contained in Article 311 of the Constitution of India :

(2) there is unauthorised dismissal of a worker of an industry governed by Industrial Law; and

(3) a statutory body has acted in breach of a mandatory obligation imposed by a statute.

When statutory status is given to an employee and there is a statute which casts certain obligations on the employer, it is only when those obligations are not performed and there is violation of the provisions of a statute that an employee gets a right to obtain a declaration that the order terminating his services is void and ineffective in law and that he still continues in service. When such is the case, even a writ in the nature of *mandamus* may be issued directing the employer to act according to the statute and reinstate the employee. A remedy for wrongful dismissal or for breach of any contract of service in all other cases is generally by an action for damages in a civil Court. A reference in this connection may be made to the latest judgment of their Lordships of the Supreme Court in *Executive Committee of U.P. State Warehousing Corporation Limited* v. *Chandra Kiran Tyagi* (2). After a review of the English decisions and various earlier judgments of the Supreme Court, it has been held by their Lordships that even if certain statutory regulations governing the terms and conditions of an employee have been violated by the corporation, it cannot be said that there is a breach of statutory obligation and that no declaration that wrongfully dismissed employee continues to be in the service of the corporation can be granted. Chandra Kiran Tyagi entered into

(2) C.A. No. 552 of 1967 decided on 8th September, 1969.

the service of the State Warehousing Corporation which was a statutory body created under the Agricultural Produce (Development and Warehousing) Corporation Act, 1956 (Act XXVIII of 1956). There were regulations made under the statute and Tyagi had been dismissed from service after some enquiry, but in disregard of clause 16 of the statutory regulations relating to the terms and conditions of his service. He filed a suit for declaration that the order dismissing him from service was null and void and that he was entitled to reinstatement with full pay and emoluments. He was allowed the necessary relief by the High Court of Allahabad in a second appeal to that Court but in an appeal to the Supreme Court by special leave, the judgment and decree of the High Court were set aside whereby the declaration was declined.

(11) Mr. Anand Sarup has invited my attention to *Life Insurance Corporation of India and others* v. *Sunil Kumar Mukherjee and others* (3), and laid great stress that writ in the nature of *mandamus* was issued which resulted in the reinstatement of some employees of the Life Insurance Corporation which, according to him, was as much a corporate body as the respondent University. He also referred to *S. R. Tewari* v. *The District Board, Agra* (4), where a writ declaring the invalidity of action of the U.P. District Board incorporated under the U.P. District Boards Act (10 of 1922) terminating the employment of a servant was issued. Both these cases have been noticed in *Chandra Kiran Tyagi's case* (2), and distinguished. The employees in these cases were held to have statutory status and the matter was, in such a situation, considered to be more of legal relationship because of the status created by statute rather than of obligations arising under the contract. It is futile to burden this judgment with discussion of several authorities cited at the bar when there is an authoritative pronouncement by their Lordships in *Chandra Kiran Tyagi's case* (2), where principles for the guidance of Courts in such matters have been laid down. The instant case is fully covered by the decision in this case. The respondent University is a body corporate incorporated under a statute. The statutory regulations only relate to the conditions of service of the officers of the University including Professors and Readers. Assuming there is any breach of any of such regulations, the remedy of the aggrieved party is not to approach this Court for the issue of a writ of *mandamus* directing the University to reemploy him in a particular office, but only by way of a suit for

(3) A.I.R. 1964 S.C. 847.
(4) A.I.R. 1964 S.C. 1680.

damages. It must, therefore, be held that the prayer for reinstatement as made by the petitioner in the present writ petition is misconceived.

(12) For the foregoing reasons, there is no merit in the writ petition which stands dismissed with no order as to costs.

R.N.M.

APPELLATE CIVIL

Before D. K. Mahajan and A. D. Koshal, JJ.

KARAM SINGH,—*Appellant.*

versus.

HARTEJ BAHADUR SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 297 of 1966.

November 6, 1969.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 43—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (I of 1948)—Section 23—Tenant dispossessed of his tenancy before the commencement of the consolidation proceedings in the village—Consolidation proceedings carried out and finalised—Application under section 43 by the tenant to regain possession thereafter—Whether maintainable—Such tenant—Whether has a remedy under the Consolidation Act.

Held, that if the tenant is deprived of the possession of the land comprised in his tenancy forcibly before the Consolidation work is started, the provisions of section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955, at once come into play and whether any consolidation work is commenced thereafter or not the tenant acquires the right as from the date of dispossession to move the Collector under the provisions of that section. The section comes into play in the case of a forcible dispossession of the tenant by the landlord and hence an application under this section by the tenant to regain possession of the land is maintainable even after the consolidation proceedings are carried out and finalised.

(Paras 7 and 8)

Held, that a tenant *opt of possession* whose title is disputed by the landlord has no right to an allotment under the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, unless the entries in the revenue records support his claim. If a tenant