CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SHER SINGH,—*Petitioner.*

versus

THE VICE-CHANCELLOR, PANJAB UNIVERSITY

AND OTHERS,—*Respondents.*

Civil Writ No. 2780 of 1964

April 9, 1969

Constitution of India (1950)—Articles 12, 226 and 311—East Panjab University Act (VII of 1947)—Panjab University—Whether a 'State' within the meaning of the expression as used in Part XIV of the Constitution—Employees of the University—Whether entitled to safeguards under Article 311—Order terminating the services of such employees—Whether can be challenged under Article 226—Rules of natural justice—Whether apply to private parties.

Held, that the Panjab University is an autonomous body having been created by the East Punjab University Act, 1947, and it is not a 'State' within the meaning of that expression in Part XIV of the Constitution of India. The expression 'State' as used in Part XIV of the Constitution means the States which are mentioned in the First Schedule to the Constitution. Panjab University no doubt is covered by the expression "the State" as defined in Article 12 of the Constitution but that is only for the purposes of Part III thereof. In Part XIV 'State' is not used in the sense envisaged by Article 12. (Para 5)

Held, that in the case of the Panjab University employees holding sanctioned posts with a maximum pay of rupees three hundred per mensem appointment to, and suspension and removal from the office may be made, or any other kind of punishment may be awarded by the Vice Chancellor. In the event of any such order of suspension, removal, or punishment the persons affected have the right of appeal to the Syndicate whose decision is made final. No other safeguards of any sort have been provided to them. The Punjab Civil Services (Punishment and Appeal) Rules, 1952, have not been made applicable to the employees of the Panjab University. Under these circumstances the employees of the University cannot be put on a higher level than the employees of any other employer. It is only the safeguard provided in Article 311 of the Constitution or in the service rules of various Services under the Union Government or the Government of a State that their employees are entitled to take benefit of and can urge with justification that if those safeguards are not respected or the procedure prescribed is not followed, their dismissal is illegal. But, in the case of master and servant, the ordinary rule of contract will apply. The employees of the Panjab University, therefore, cannot claim the benefit of the safeguards embodied for a Government servant in Article 311 of the Constitution. (Paras 5 and 6)

Held, that the Panjab University is neither a Government Corporation nor an industry run by or under the authority of the Union Government. The statute incorporating the University does not provide for any obligation which the University owes to its employees in respect of their services. There are no statutory rules prescribed by any authority giving any protection or safeguard to the employees. There is no statutory or public duty imposed on the University by statute in respect of its employees of which enforcement can be sought by means of a *mandamus*. The University is free to employ, suspend, remove or dismiss any of its employees and similarly the employees have the right to give up the employment at any time subject to the terms of the contract between the two. The remedy under Article 226 of the Constitution is not available for enforcement of contractual obligations and hence the order terminating the services of the Panjab University employees cannot be challenged under Article 226 of the Constitution. **(Para 6)**

Held, that the rules of natural justice are not embodied in any statute. They are meant for doing justice and are to be observed by the authorities on whom a public or statutory duty is imposed but it cannot be said that private parties should also observe the same. **(Para 9)**

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus prohibition or any other appropriate writ, order or direction be issued quashing the order, dated 25th September, 1964 of the Panjab University terminating the services of the petitioner and further praying that the petitioner be reinstated and reimbursed for the period he has been out of job.

I. K. MEHTA, ADVOCATE, for the Petitioner.

D. N. AWASTHY, ADVOCATE, for the Respondents.

JUDGMENT.

TULI, J.—The petitioner joined the service of the Punjab University on August 31, 1963 as Head Laboratory Assistant, Biochemistry Department, for which appointment letter No. 10189-91/Estt. dated August 24, 1963 was issued, a copy of which is Annexure 'A' to the writ petition. According to this letter the petitioner was appointed at Rs. 145 per mensem in the grade of Rs. 145—7—180—12—300, on one year's probation from the date he started work. In case he wanted to leave the service of the University, he was to give a prior notice of at least one month or to pay to the University an amount equivalent to his one month's pay in lieu thereof.

(2) The petitioner's period of probation expired on August 31, 1964 on which date he was granted the annual increment in accordance

with Regulation 8 of Panjab University Calendar, 1962, Volume I, which reads as under:—

> "An increment shall ordinarily be drawn as a matter of course but the appointing authority shall be competent to withhold increment if the conduct of the employee has not been good or his work has not remained satisfactory."

All of a sudden on September 25, 1964, by letter No. 9954-56/Est of that date, the Vice-Chancellor terminated the services of the petitioner as his work and conduct had not been found satisfactory. He was given one month's notice from the date of the letter. A copy of the letter issued by the Registrar of the Panjab University to the petitioner conveying the order of the Vice-Chancellor is Annexure 'B' to the writ petition. The petitioner filed an appeal under Regulation 3 on page 73 of the said Calendar to the Syndicate of the Panjab University which was rejected on November 27, 1964. The decision of the Syndicate rejecting the appeal is contained in paragraph 39 of the proceedings of its meeting held on November 27, 1964, and reads as under:—

> "Considered appeal of Shri Sher Singh, Head Laboratory Assistant, Biochemistry Department, against orders of Vice-Chancellor terminating his services, with effect from 25th October, 1964, for unsatisfactory work and conduct.
>
> Vice-Chancellor stated that Head of Department of Biochemistry had reported that Shri Sher Singh's work and conduct were unsatisfactory. Shri Sher Singh had not been confirmed, when Vice-Chancellor passed orders for terminating his services. The appeal of Shri Sher Singh was read out.

RESOLVED : That appeal of Shri Sher Singh be rejected." The petitioner then filed the present writ petition in this Court on December 18, 1964 challenging the order of termination of his services by the University mainly on the following grounds:—

(1) That the order was passed *mala fide* because the petitioner had filed a writ petition in this Court (Civil Writ No. 1856 of 1963) in respect of the declaration of his result for M.B.B.S., (1st Professional) Examination held in 1962 which he had taken as a student of the Medical College,

Patiala. He had been declared unsuccessful but as a result of the writ petition he was declared successful after revaluing his marks as ordered by this Court. The proof of the *mala fides* is stated to be contained in the questionnaire which th e petitioner was required to answer and a copy of which is Annexure 'C' to the writ petition;

(2) that the impugned order was made at the instance and request of respondent 2 who is the Head of the Biochemistry Department of the University as he wanted to appoint his own favourite Shri Lekh Raj Sharma, respondent 3, who is a brother of Shri Gian Chand, Laboratory Supervisor, Chemistry Department, in the place of the petitioner;

(3) that the principles of natural justice were not observed while terminating his services, that is, he was never given any notice or intimation that his work and conduct had been found to be unsatisfactory nor was he afforded any opportunity to explain the allegation nor was any enquiry held by the University before terminating his services;

(4) that his period of probation expired on August 31, 1964 and he was granted increment on the expiry of the year. The increment is generally granted if the work and conduct are found to be satisfactory. The allegation, that his work and conduct were not satisfactory, was inconsistent with the increment that was allowed to him on August 31, 1964/September 1, 1964 and it cannot be said that in another 25 days his work and conduct had been found to be unsatisfactory.

(3) The return to the writ petition has been filed by respondent 2 in which the allegation of *mala fides* is denied. It is stated that his work and conduct had been found unsatisfactory a number of months before the expiry of the period of his probation but he was being given time for improvement. It is also pointed out that his service was temporary and he had not been confirmed. His services could be terminated by one month's notice which was given to him. There was no question of holding an enquiry as it was the opinion of the Head of the Department as to his work and conduct during the period of his probation which led to the termination of his services after which no enquiry was needed nor any show-cause

notice was required to be given to the petitioner. There was thus no violation of the principles of natural justice on this ground.

(4) By way of preliminary objection it has been urged that no writ petition is competent against the University by the petitioner as no mandatory obligation has been imposed by the statute on the University to follow the procedure indicated by the petitioner before terminating his services. The petitioner has therefore, no right to ask this Court for a writ of *mandamus* against the University directing it to hold an enquiry, etc. The petitioner's remedy is only by way of a suit for damages and he cannot be reinstated in the service of the University by this Court in exercise of its powers under Article 226 of the Constitution. The second objection is that the petitioner's service was under a contract and the writ jurisdiction cannot be availed of for the enforcement of a contractual obligation between the employer and the employee. The last objection is that the writ does not lie against the University in respect of a purely administrative action taken by it against an employee.

(5) The first point to be decided is whether the petitioner is entitled to any safeguards like the ones provided in Article 311 of the Constitution of India or in the Punjab Civil Services (Punishment and Appeal) Rules, 1952. This matter, in turn, depends on the determination-whether the Panjab University can be said to be 'State' and its employees can be said to be members of a civil service of the Union or a civil service of a State or holding a civil post under the Union or a State. The Panjab University is an autonomous body having been created by the East Panjab University Act VII of 1947 and it is not a 'State' within the meaning of the expression in Part XIV of the Constitution of India and the provisions of Article 311 are not applicable to the employees of the University. The expression "State" as used in Part XIV of the Constitution means the States which are mentioned in the First Schedule to the Constitution. There is no doubt that the Panjab University will be covered by the expression "the State" as defined in Article 12 of the Constitution but that is only for the purposes of Part III thereof. In Article 12 "the State" includes all local and other authorities within the territory of India or under the control of the Government of India. The Panjab University is not under the control of the Government of India but it is certainly an authority within the territory of India. In Part XIV, however, "State" is not used in that sense. For this reason, I am of the opinion that the

employees of the Panjab University cannot claim the benefit of the safeguards embodied for a Government servant in Article 311 of the Constitution.

(6) Chapter IV of the Panjab University Calendar 1962, Volume I, provides regulations for the appointment, conditions of service, etc., of officers and servants of the University. Class 'B' of the officers consists of persons appointed in the pay-scale with the minimum pay of one hundred and twenty rupees or above per mensem and not included in (i) and (ii) of Class 'A' mentioned in Regulation 1 of that Chapter. The petitioner was thus an officer of Class 'B'. The appointment to and suspension and removal from office or any kind of punishment of officers or servants of the University in the case of officers of Class 'B' rest with the Syndicate as provided in Regulation 3 of that Chapter. There is a proviso to that regulation which states that in the case of the University employees holding sanctioned posts with a maximum pay of rupees three hundred per mensem appointment to, and suspension and removal from the office may be made, or any other kind of punishment may be awarded by the Vice Chancellor. In the event of any such order of suspension, removal, or punishment, the persons affected shall have the right of appeal to the Syndicate whose decision is made final. It was under the proviso to Regulation 3 that the Vice Chancellor terminated the services of the petitioner as his salary was less than rupees three hundred and more than rupees one hundred and twenty per mensem. No other rules have been provided for taking disciplinary proceedings against the University employees. No other safeguards of any sort have been provided to them. The Punjab Civil Services (Punishment and Appeal) Rules, 1952 have not been made applicable to the employees of the Panjab University. Under these circumstances the employees of the University cannot be put on a higher level than the employees of any other employer. It is only the safeguards provided in Article 311 of the Constitution or in the service rules of various services under the Union Government or the Government of a State that their employees are entitled to take benefit of and can urge with justification that if those safeguards are not respected or the procedure prescribed is not followed, their dismissal is illegal. But, in the case of any other master and servant, the ordinary rule of contract will apply and the employee cannot approach this Court for reinstatement under Article 226 of the Constitution. The observations of their Lordships of the Supreme Court in *Praga Tools Corporation*, v. *C. A. Inamual & others* (1),

(1) A.I.R. 1969 S.C. 1306.

in my opinion, aptly apply to the Panjab University and its employees. In that case the Union Government and the Government of Andhra Pradesh held 56 per cent and 32 per cent shares, respectively in Praga Tools Corporation while the balance 12 per cent shares were held by the private individuals. Being the largest shareholder, the Union Government had the power to nominate the company's directors case. Their Lordships, on these facts, held as under:—

> "Even so, being registered under the Companies Act and governed by the provisions of the Act, the company is a separate legal entity and cannot be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. A *mandamus* lies to secure the performance of a public or statutory duty, in the performance which the one who applies for it has a sufficient legal interest. Thus, an application for *mandamus* will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligation owed by a company towards its workmen or to resolve any private dispute. The company being a non-statutory body and one incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a *mandamus* nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty."

On the parity of reasoning it can be said in the instant case that the Panjab University is created under the East Panjab University Act, 1947 and is governed by the provisions of that Act. It is neither a Government corporation nor an industry run by or under the authority of the Union Government. The statute incorporating the University does not provide for any obligation which the University owes to its employees in respect of their services. There are no statutory rules prescribed by any authority giving any protection or safeguard to the employees. There is no statutory or public duty imposed on the University by statute in respect of its employees of which enforcement can be sought by means of a *mandamus*. The University is free to employ, suspend, remove or dismiss any of its employees and similarly the employees have the

right to give up the employment at any time subject to the terms of the contract between the two. The remedy under Article 226 of the Constitution is not available for enforcement of contractual obligations. This petition by the petitioner, therefore, is not maintainable.

(7) The other point vehemently argued by the learned counsel for the petitioner is that respondents 1 and 2 did not follow the principles of natural justice by giving him a show-cause notice and affording him an opportunity of rendering his explanation. Reliance has been placed on a Division Bench judgment of Calcutta High Court in *Commissioners for the Port of Calcutta and another* v. *Baleswar Singh* (2), in which it was held (as per the head note) that—

> "the Commissioners for the Port of Calcutta, being a statutory body, must act according to the statute of incorporation. An employee of the Port Commissioners is an employee of a statutory authority, namely, the Commissioners for the Port of Calcutta, and hence, he is not a Civil servant under the Government or a Governmental authority. This statutory authority has got the right given to it of employing people for carrying out their work and of dismissing them or suspending them from service. They also have powers to frame rules for that purpose, but the provisions of Article 311(2) of the Constitution are not attracted, nor any rules applicable to Government servant attracted as such. Provisions of Section 18 of the Central Civil Services (Classification, Control and Appeal) Rules, relating to dismissal of an employee without initiating departmental proceedings on being convicted of criminal charges, are not applicable to an employee of Port Commissioners, since the Rule has not been adopted by the Port Commissioners by any specific resolution. However, the Port Commissioners are bound by rules of natural justice and hence, they must, before dismissing an employee convicted on criminal charges, give him show-cause notice and hear his defence and then only dismiss him through departmental proceedings."

In that case Baleswar Singh had been removed from service because he had been convicted on a criminal charge under sections

(2) A.I.R. 1968 Cal. 206.

147 and 323, Indian Penal Code, and sentenced to pay a fine or in default to undergo rigorous imprisonment which was confirmed by the appellate Court. He was removed from service on that ground. He filed the writ petition under Article 226 of the Constitution and Basu, J., held, "(i) that on the relevant date the Port Commissioners had not framed any rules and there could not be any removal, (ii) that there was a violation of the rules of natural justice and as such the order was invalid." Against that order the Commissioners for the Port of Calcutta filed an appeal which was dismissed and the order of Basu, J., was affirmed. With very great respect to the learned Judges I am not inclined to follow their decision in view of the judgment of their Lordships of the Supreme Court set out above. These matters can be raised in a suit for getting a declaration that the removal from service was illegal or for damages but a *mandamus* cannot issue setting aside the dismissal or removal from service on the ground that principles of natural justice were violated for the reason that there is no public or statutory duty imposed on the University towards its employees, the enforcement of which can be claimed by the latter.

(8) Another grievance of the learned counsel for the petitioner is that the order removing him from service casts a stigma on his work and conduct and, therefore, was not an innocuous order but was penal in nature. This matter can also not be gone into in a writ petition which is not competent and may be gone into by the civil Court if a suit is filed by the petitioner for the vindication of his honour.

(9) It was held by their Lordships of the Supreme Court in *Lakhraj Sathramdas Lalvani*, v. *N. M. Shah and others* (3) as under:—

> "In our opinion, the order of the Deputy Custodian—P. 13 and P. 16—removing the appellant from the management of the business is not vitiated by any illegality. But even on the assumption that the order of the Deputy Custodian terminating the management of the appellant is illegal, the appellant is not entitled to move the High Court for grant of a writ in the nature of *mandamus* under Article 226 of the Constitution. The reason is that a writ of *mandamus* may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a

(3) A.I.R. 1966 S.C. 334.

failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. In the present case the appointment of the appellant as a Manager by the Custodian by virtue of his power under Section 10(2) (b) of the 1950 Act is contractual in its nature and there is statutory obligation as between him and the appellant. In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution."

The contract between the petitioner and the University in the instant case was of a private nature between a master and a servant and there was no statute which provided any safeguards to the petitioner which could not be violated and if violated it could give any cause of grievance to the petitioner. The rules of natural justice are not embodied in any statute. As the phrase itself shows, they are meant for doing justice and are to be observed by the authorities on whom a public statutory duty is imposed but it cannot be said that private parties should also observe the same. In case the removal from service was considered to be illegal by the petitioner, he could and should have filed a civil suit for getting his removal declared illegal and for damages as a result thereof.

(10) For the reasons given above, the petition is not competent and is, therefore, dismissed but without any order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

THE HINDUSTAN MACHINE TOOLS LIMITED, PINJORE,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 670 of 1969

April 22, 1969

Punjab Passengers and Goods Taxation Act (XVI of 1952)—Ss. 2(i), 2(f) and 3—Motor Vehicles Act (IV of 1939)—Ss. 2(25), 112 and 123—Motor Vehicles of a Company registered as public service vehicles—Such vehicles—whether deemed to be of that type for the purpose of Punjab Passengers and