

CALCUTTA HIGH COURT

M. Verghese

Vs.

Union of India

C.R. No. 4052 of 1960 and C.R. No. 14 (w) of 1961

(P.B. Mukharji, J.)

27.09.1962

ORDER

P.B. Mukharji, J.

1. These two applications under Article 226 of the Constitution were by consent directed to be heard together because they raise the same points of controversy. There is a minor difference between them but that is not very material and I shall deal with that difference later on.

2. The petitioners are drivers employed under the Durgapur Steel Project under the Hindusthan Steel Limited. The first petitioner in Rule No. 4052 of 1960 was appointed on the 1st April, 1957 pursuant to an offer made on the 26th March. His services were terminated on the 20th June, 1959. He did not obtain the Rule until as late as 19th September, 1960. The petitioner in the other Rule, Bimal Chandra Majumdar was appointed on the 21st September, 1957 on an offer made on the 11th September 1957. His services were terminated on the 14th April, 1959. He did not obtain this Rule until 17th January, 1961. Delay has been urged as a ground in both the cases on which it has been contended that the applications must be dismissed and the Rules must be discharged.

3. The petitioner, Verghese, in Rule No. 4052 of 1961 was only a temporary driver. The offer which the General Manager, Ministry of Iron and Steel, Durgapur Steel Project, Government of India made to him makes it clear that the post that was being offered to him was the post of a "temporary driver". The letter of appointment in his case leaves no room for doubt or argument on this point. In fact the letter of appointment reads as follows :

"Mr. M. Verghese is appointed as a Driver with effect from 1-4-57 FN on a pay of Rs. 60/- per month in the scale of Rs. 60-5/2-75/- plus usual allowances admissible under the existing Government of India Rules. The appointment is purely temporary and can be terminated at any time without assigning any reason."

4. This shows that the petitioner Verghese was a temporary employee and that a term or

condition of his temporary appointment was that his services could be terminated at any time without assigning any reason. In fact what happened was that on the 20th May 1959 the General Manager, Durgapur Steel Project terminated his services in the following terms :

"The services of Shri M. Verghese, Driver attached to the Mechanical Division, are terminated with effect from the afternoon of the 21st May 1959."

5. It is this order of termination that the petitioner Verghese challenges as illegal and unconstitutional. His submission is that he is a Government servant and therefore he has all the protections guaranteed by the Constitution and specially by Article 311 of the Constitution. He complains that there was no charge-sheet against him and that he never had any opportunity to show any cause against such termination and therefore he complains that the termination was in violation of the principles of natural justice. It has been contended on behalf of the petitioner Verghese that he is governed by the Standing Orders for Industrial Employees of the Hindusthan Steel Limited which were issued under the Industrial Employment (Standing Orders) Act, 1946. The reason why this contention was put forward on behalf of the petitioner was that the term 'employee' in these Rules and Orders included a probationer and that therefore the petitioner could only be proceeded against under Rule 40 of those Rules which describe the steps for disciplinary proceedings under those Rules. All these points are common with the petitioner in the other Rule where the petitioner is Bimal Chandra Majumdar.

6. The technical difficulties in this petition are in my view insuperable. The petitioner has made the Union of India, General Manager, Durgapur Steel Project (Hindusthan Steel Limited) and Secretary, Hindusthan Steel Limited as the three respondents to this application. Now the first respondent, Union of India, is supposed to be represented by the Secretary, Ministry of Iron and Steel, New Delhi. This first respondent, Union of India, is outside the jurisdiction of this Court and of the Writ under Article 226 of the Constitution. The third respondent who is the Secretary, Hindusthan Steel Limited, is described to be of Ranchi, Bihar, which is also outside the jurisdiction of this Court and of the Writ under Article 226 of the Constitution. It is true that the second respondent, General Manager is at Durgapur, Burdwan within the jurisdiction of this Court under Article 226 of the Constitution. But that does not help the petitioner and the Rule must fail for reasons pointed out in *Lt. Col. Khajur Singh v. Union of India*,) decided by the Supreme Court.

7. The second technical difficulty is the delay which I have already mentioned. In answer to the point of delay it has been contended on behalf of the petitioner, Verghese, that although his services were terminated on the 20th May, 1959, representation was made on his behalf by Shri Hemanta Kumar Bose, M.L.A., Calcutta to the Chief Minister of West Bengal some time in May, 1960. The Chief Minister's answer to such representation was dated the 14th May, 1960. Even then that does not really explain the delay. If the services of the petitioner, Verghese, were terminated on the 20th May, 1959, there is no reason why he should wait for about one year to make a representation through Shri Hemanta K. Bose. The Chief Ministers reply dated the 14th May, 1960 expressed inability to interfere in the matter. Then the petitioner sent a formal letter of demand through his Advocate on the 15th July, 1960. Even then he did not move until the 19th September 1960. Temporary employees while complaining of wrongful dismissal should really not delay

¹ AIR 1961 SC 532

these proceedings for the very simple reason at best it is a challenge for a wrongful dismissal and posts and work attendant thereon cannot be left vacant for an indefinite period without detriment to administration, and a constitutional remedy should be sought with reasonable promptitude. If not then it is unwise to use the discretion in their favor in granting such rules. This objection on the ground of delay also applies to the case of the other petitioner Bimal Chandra Majumdar who did not take out the Rule as I said until the 17th January, 1961 although his services had been terminated on the 14th April, 1959. There is really no sufficient or any satisfactory explanation for this delay.

8. The defense of the plea of the Standing Orders for Industrial Employees of the Hindustan Steel Limited is not available to the petitioners because these Standing Orders came into force on or after the 1st April, 1960 which is proved by the copy of a letter dated 1st/4th April, 1960 of the Hindustan Steel Limited written to the General Manager, Durgapur Steel Project and a copy of which has been served and which is directed to be filed herewith. Now if these Standing Orders came into force on the 1st/4th April, 1960, then I do not see how they can be invoked by the petitioners who were discharged, one on the 20th or 21st May, 1959 and the other on the 14th April, 1959.

9. The answer to these two petitions is that the petitioners being only temporary employees and whose letters of appointment clearly stipulate as a term and condition that their services could be terminated at any time without assigning any reason, these terminations cannot be challenged either as illegal or as unconstitutional. The termination in either case was under the terms of the special contract. The termination was not on any ground of misconduct. The termination, therefore, cannot be regarded as a punishment in this case. No question, therefore, of any disciplinary jurisdiction or disciplinary procedure arises in the facts of these two applications.

10. Following the decision of *Parshotam Lal Dhingra v. Union of India*², and the principles laid down there this Rule must be discharged. There the appellant was a Signaller in the railway service and claimed to be a Government servant also as the petitioners do here in this case. But the terms of his appointment which were temporary and officiating prevented his claim from succeeding. It was held by the Supreme Court there as follows :

"On facts that the petitioner was appointed to the higher post on an officiating basis, that he had no right to continue in that post and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment. The provisions of Article 311 (2) were not therefore attracted to the case."

It is not necessary to quote again the observations in *Parshotam Lal Dhingra's* case, AIR 1958 Supreme Court 36 at page 42 and which I have quoted at length in my recent decision in (*Baroda Kanta Adhikary v. State of West Bengal*)³

11. What remains for me now to consider is the long and elaborate arguments that had been advanced at the bar before me in this case that service under the Hindustan Steel

² AIR 1958 SC 36

³ Civil Revn. No. 3054 of 1959 delivered on the 21st August, 1962 : (AIR 1963 Cal 161)

Ltd. which is a Government undertaking, is service under the Government and therefore, it is a civil post under the Union or civil service of the Union within the meaning of Article 311 and Part XIV of the Constitution of India. Now I do not consider it essential for the ultimate result of this application because even if this point is found or decided in favor of the applicant, this petition cannot succeed having regard to the principles laid down by the Supreme Court in Parshotam Lal Dhingra's case, AIR 1958 Supreme Court 36. On this branch of the argument the legal nature of this Government Company requires careful analysis.

12. Hindustan Steel Limited is a Government Company within the meaning of Section 2 (18) read with Section 617 of the Indian Companies Act. These two sections define a Government Company to mean any company in which not less than fifty-one per cent of the share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a Company which is subsidiary of a Government Company so defined. Now Government Companies are a new introduction in the Indian Companies Act. They have a special position, for Instance a Government Company cannot have a Managing Agent under Section 618 of the Companies Act, and it has special provisions for audit and special powers are exercised by the Comptroller and Auditor-General of India under Section 619 of the Companies Act notwithstanding the provisions contained in Sections 224 to 233 of the Companies Act. Further, where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that Company to be placed before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller and Auditor-General of India under Section 619A of the Companies Act. Further extensive powers are given to the Central Government to modify the whole of the Companies Act in relation to the Government companies. In fact the Central Government may by notification in the Official Gazette direct that any of the provisions of the Companies Act other than Sections 618, 619 and 639 shall not apply to any Government Company or shall apply to any Government company, only with such exceptions, modifications and adaptations, as may be specified in the notification. Finally, under Section 639 annual reports on Government companies were to be placed before Parliament. Government company is, therefore, rather a new type of legal creation in company management.

13. In this particular case Hindustan Steel Ltd. is a Government company but paradoxically enough it is a Private Limited Company although it is the most public of all the public companies dealing with the most public of all public matters like iron and steel. It is a Private Company in the sense that private companies are defined under Section 3(iii) of the Companies Act, because its Articles restrict the right to transfer its shares and limits the number of its members as defined there. But although in Section 13 (1) (a) of the Companies Act the words "Private Limited" are necessary appendix in the designation of all Private Limited Companies, this legal requirement has been dispensed with by a special notification under Section 620 of the Companies Act. The result, therefore, is that Hindustan Steel Ltd. although a private Limited Company by its Articles is not described as Private Limited Company. This is perhaps just as well because it would have looked incongruous for Hindustan Steel Ltd. to be publicly called a private Limited Company although legally it is so.

14. The Hindustan Steel Ltd, has only three shareholders. The President of India holds the major shares and the few remaining shares are held in the name of the two Secretaries of two

Ministries. In the report of the Ministry of Steel 1960-61 at page 11 it is stated "As a result of this decision the Hindustan Steel Limited became a purely Government-owned Company". All the shares are owned by the Government. There are no private share-holders. This report may be kept on the records of this case. The Memorandum of Association shows as its subscribers the Secretary to the Government of India in the Ministry of Production, for and on behalf of the President of India and the two Constituted attorneys on behalf of two German firms. The Memorandum has for its main objects to carry on in India and elsewhere the trades or business of iron masters, steel makers, smelters, iron founders etc. The Articles of Association of this Company expressly excluded the usual regulation in Table A to the First Schedule of the Companies Act by saying that all the regulations of Table A shall be excluded except so far as the same are repeated or contained in or expressly made applicable by these articles or by the Act. The capital of this Company is Rs. 6,000,000,000 divided into 6,000,000 shares of Rs. 1,000/- each. The Company by Article 4 expressly said to be a 'private company', prevented invitation to the public to subscribe for any shares in or debentures of the company and restricting the right of transfer of shares and limiting the number of members as specified there. Although the shares are in the control of the Board of Directors who may allot or otherwise dispose of the same to such persons and on such conditions as they think fit, they are, however, expressly by Article 11 subject to the provisions of the Companies Act and to the rights of the President of India. Similarly new shares that can be issued are subject to such directions as may be issued by the President under Article 44. Extensive powers are reserved for the President under Article 47 for reduction of capital and for altering the condition of the Memorandum regarding consolidation, division and sub-division of shares. Borrowing powers are also subject to the approval of the President under Article 50. Although there is provision for calling of the Annual General Meeting it is naturally confined to the three shareholders, the President and the two Secretaries in actual fact. The President determines the number of Directors and the President also appoints the Directors and directs what salary or allowances are to be paid (sic) to whom. The President also appoints a Chairman and Deputy Chairman of the Board of Directors. The President has further the power to remove any Director including the Chairman at his absolute discretion under Article 96 (c) of the Articles of Association. The President also can appoint General Managers or Managers or Financial Advisers and Chief Accounts Officers. Provision is made for annual accounts and balance sheet under Article 136 for annual report of Directors under Article 137 and for particulars of profit and loss account under Article 138. Regarding Auditors of this Government Company they are to be appointed by the Central Government on the advice of the Comptroller and the Auditor General of India and such Auditor General has extensive powers as provided under Article 143 of the Articles of Association.

15. It is contended on behalf of the petitioners on these facts that Hindustan Steel Ltd. is a Government Company and its employees are Government employees. In other words they are holding civil post under the Government. The learned Advocate for the petitioners contends that the mere fact that the Government takes a garb of the name of a company cannot alter the essential nature of the service of the employees of the Company who are employees of a Government Company. He also contends that the fiction alone that the Company is a legal entity and as such separate from Government does not alter the essential nature of the service of the employees which remains Government service.

16. This argument was rejected by a Division Bench of the Patna High Court in *Subodh Ranjan Ghosh v. Sindri Fertilisers and Chemicals Ltd.*⁴. It is held there that in the eye of the law the

Company is a separate legal entity and has separate legal existence and therefore, the company is a different person altogether from the subscribers to the memorandum, namely, the President or the Secretary to the Government of India. It may be that after incorporation the business is precisely the same as it was before and the same persons are Managers and the same hands receive the profits. Still it was held that in the eye of the law the Company was not the agent of the Union Government or trustee for them. Ramaswami C. J. who delivered the judgment of the Division Bench discussed the question of ownership, control and management of the Company and held that though they were completely vested in the President of India yet the Court was not entitled to "pierce the veil of corporate entity and to examine the reality beneath," following the English decision in *Tamlin v. Hannaford*⁵,

17. But this decision in AIR 1957 Patna 10 has been criticised before me on the ground that it is based on the decision of the English Court of Appeal in *Tamlin v. Hannaford*⁶, which really does not apply in essential particulars and facts to the Government Company that I am considering here or even what was considered in the Patna decision. On that ground I am asked not to follow the Patna decision. Turning now to the decision of the English Court of Appeal in 1950-1 KB 18 it does appear that the British Transport Commission which was the statutory Corporation under consideration in that case, was materially different from the Hindustan Steel Ltd. which I am considering here. The British Transport Commission was brought into being by the Transport Act of 1947 in the United Kingdom. But the significant features that distinguish the British Transport Commission are : (1) there are no shareholders to subscribe the capital or to have any voice in its affairs, (2) the money which the Corporation needs is not raised by the issue of shares but by borrowing; and its borrowing is not secured by debentures, but is guaranteed by the Treasury, (3) if it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom, that is to say, on the taxpayer, (4) there are no profits to be made or distributed and the duty of the Corporation is to make revenue and expenditure balance one another, taking, of course, one year with another but not to make profits. These features appear to me that the case of the British Transport Commission is very different from a Government Company of the type of Hindustan Steel Ltd. Denning, L.J., at pages 24-25 in the report of the case in (1950) 1 KB 18 discusses the nature of statutory corporations of the type of the British Transport Commission under the Transport Act of 1947. It is the Minister who appoints the Directors, the members of the Commission and fixes their remuneration and they must give the Minister any information he wants. The Minister of course is accountable to British Parliament. Denning, L.J. at page 24 of that report says that in spite of these features, the Corporation and the Crown were not the same there, and proceeded to observe as follows :

⁴ AIR 1957 Pat 10

⁶(1950) 1 KB 18

⁵(1950) 1 KB 18.

"It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants and its property is not Crown property."

The learned Lord Justice then proceeds to discuss another authority of statutory corporation called the Railway Executive in England. This is a statutory corporation but the Railway Executive as such corporation is nothing more or less than the Agent of Commission. At the same page 24,. Denning L. J., observed :

"All this seems to be quite inconsistent with the notion that the Commission is itself a

government department or an agent of the Crown."

But Denning L. J. cautions against drawing analogies by saying at page 24 :

"We do not find it very useful to draw analogies from other bodies which are differently constituted and differently controlled and exist for different purposes."

The learned Lord Justice dismisses the Territorial Forces Association on the ground that it is not a commercial concern and disposes of the British Post Office although connected with commercial concern on the ground that the anomaly of the British Post Office is due to its history. Although the fact remains that the Post Office has commercial interests and matters yet it is regarded as Government Department and its servants are regarded as civil servants.

18. But Denning, L. J. at page 25 of the report makes the following significant observation on another type of corporation called the Central Land Board established by the Town and Country Planning Act, 1947 in England :-

"When Parliament intends that a new corporation should act on behalf of the Crown, it as a rule says so expressly, as it did in the case of the Central Land Board by the Town and Country Planning Act 1947, which was passed on the very same day as the Transport Act, 1947. In the absence of any such express provision, the proper inference, in the case, at any rate, of a commercial corporation, is that it acts on its own behalf, even though it is controlled by a government department."

19. From the above observation it would be clear that because the Government takes the garb of a legal entity like the "Company" it does not necessarily and always mean that the corporation can never be the Government or its agent, It all depends on the terms of the statute. The British example of the Central Land Board is an example of a statutory corporation which by its very term shows that it acts on behalf of the British Crown and therefore its servants are Crown servants. It is certainly therefore undesirable to follow any doctrinaire attitude in this matter as I indicated in Barada Kanta Adhikari's case, (C. R. 3054 of 1959 : (AIR 1963 Calcutta 161). Each case really should be judged on its own facts and particular features of the particular company, corporation or concern involved in the case.

20. It is pertinent to enquire in a case of government company of the pattern of Hindustan Steel Limited whether it pays income tax or not and if it does not then why not. When business or an undertaking in the nature of commercial undertaking is run by Government Department it does not pay income-tax such as Railway or Post Office here in India. If Hindustan Steel Ltd. makes profit, I am told it has not made profit but suffered losses, then where does the profit go ? In case of loss which, I am told, has happened in this case, who bears the loss ? These questions indicate some of the legal aspects of this growing legal problem about the nature and character of State enterprises in India.

21. The welfare State or the service State under the present Constitution of India has encouraged a number of public undertakings where the control lies with the State and the Government. Their

number, patterns, and variety are legion. They do not represent any uniform type. The control is not merely in respect of finance but also management. There has yet been no comprehensive study or work on State enterprises in India. It appears, however that India is evolving three basic legal patterns for State enterprises namely (1) Statutory Corporations formed by and under Special Statutes, both Parliamentary and State, (2) Government Departmental undertakings and (3) Government Companies under the Companies Act with special Articles and Memoranda.

22. The statutory corporations are created by special statutes, for instance such statutes as the Damodar Valley Corporation Act, 1948, The State Bank of India Act 1955, the Rehabilitation Finance Administration Act 1948 and the Road Transport Corporation Act, 1950. Different corporations, called statutory corporations are established by these different Acts. These are special statutes creating special corporations with special powers and with special provisions. It will be wrong to assume that the corporations established by different statutes are of the same pattern. They vary naturally according to the purpose they have in view. The Damodar Valley Corporation established by the Damodar Valley Corporation Act, 1948, creates the Corporation as a body corporate with perpetual succession and common seal under Section 3 of the Act but with no shareholding and Board of directors, the participating Governments providing the capital.' It expressly provides by Section 5 that every member of a Corporation shall be a whole time servant of the Corporation. The Relief Finance and Administration Act, 1948, establishes another type of Corporation by the name Rehabilitation Finance Administration which is a body corporate, with perpetual succession, common seal, and again without shares and without a Board of Directors but it is managed by a Chief Administrator called a Chariman appointed by the Central Government and three officials and non-officials appointed and nominated by the Central Government. Its funds are provided by the Central Government and the moneys are deposited with the Reserve Bank of India or its agents or invested with such securities as may be approved by the Central Government. The Central Government again has powers to give directions under Section 19 of the Act. Similarly the Road Transport Corporation Act, 1950 sets up the Road Transport Corporation which is another type of body corporate with perpetual succession and common seal. The Corporation is managed by a Chariman and such number of other members as the State Government may deem fit. This is also a Parliamentary statute. The Chief Executive Officer, the General Manager and, a Chief Accounts Officer are appointed by the State Government. The capital of the Corporation may be provided by the Central Government and the State Government in such proportions as may be agreed, but the Corporation is given the power to raise by issue of shares such capital as may be authorised by the State Government. But again these shares of the Corporation are not transferable except in accordance with the rules made under this Act. Similarly additional capital may be found by issue of new shares. The shares, the principal and the dividend are guaranteed by the State Government. A learned Single Judge In *Prafulla Kumar Sen v. Calcutta State Transport Corporation*⁷, has held that the Calcutta State Transport Corporation established under the Road Transport Corporation Act is an incorporated body and is an entity different from the State Government. So the employees thereof are not persons holding 'civil post' under the State. See also in this connection a decision of the Division Bench of the Andhra High Court in *Andhra Pradesh State Road Transport Corporation v. Income Tax Officer, Hyderabad*⁸ where it has been held that in spite of all the control and management the Corporation was not a state-owned corporation nor was the Corporation carrying on business on behalf of the Government. This case is an authority for holding that the income of the Road Transport is liable to pay tax under the Income-tax Act.

23. Again the State Bank of India Act, 1955, establishes the State Bank as a body corporate with perpetual succession and common seal but with a share capital and Section 10 provides for transferability of the shares of the State Bank subject to the limitations imposed there in respect of the Reserve Bank holding of the shares. Section 7 of the State Bank of India Act, 1955 provides for a transfer of service of the existing members of the Imperial Bank to the State Bank making an express provision for exclusion of the operation of the Industrial Disputes Act to such employees. It has been held that an employee of the State Bank of India does not hold a 'civil post' under the State within the meaning of Article 311 of the Constitution in the case of *Baleshwar Prasad v. Agent, State Bank of India, Gaya*⁹, At the same time the Manager of a Bank owned by a State and where the Bank was really being administered not under any special statute but as a Department of the State Government, it was held that service under such Bank was the service of a civil post within the meaning of Article 311 in *Mohan Singh v. Patiala and East Punjab States Union*¹⁰, See also in this connection the decision of the learned Single Judge of this Court in *Suprasad Mukherjee v. State Bank of India*¹¹, where it has been held that an employee of the State Bank is not a civil servant under the State or the Union of India, under Article 311 of the Constitution.

24. The Life Insurance Corporation Act, 1956 establishes again a different type of corporation called the Life Insurance Corporation of India which is a body corporate having a perpetual succession and common seal, but with no share capital and no Board of Directors as such although Section 20 of the Act provides that the Corporation may appoint one or more persons to be the Managing Director or Directors of the Corporation.

25. It will be thus seen from different examples drawn from different statutes that statutory Corporations are governed entirely by the terms and conditions of the particular statutes creating such Corporations. In spite of control both of finance and functions by the State or a Government in such statutory corporations its service is generally regarded not as a civil service or civil post under the State within the meaning of Article 311 of the Constitution although it is unwise even in such cases of statutory corporations governed by statutes to formulate any rigid general principle for the simple reason that a statute

⁷1962-5 FLR 57 : (AIR 1963 Cal 116)

⁹ AIR 1958 Pat 418

⁸ AIR 1962 And Pra 323

¹⁰ AIR 1954 Pepsu 136.

¹¹65 Cal WN 1101 : (AIR 1962 Cal 72)

may by its very term say that its employees will be regarded as Government's servants or servants holding civil post under the State within the meaning of Article 311 of the Constitution.

26. The second type or pattern of State enterprises is provided by the usual departmental undertakings. Many Government Departments like the Railway and the Post Office and Public Works provide numerous examples of such departmental undertakings. The line of demarcation between departmental undertakings and statutory corporations is legally clear although even departmental or State undertakings have in fact created practical problems. Indeed the Estimates Committee of Parliament in its Sixteenth Report points out that "State undertakings had become adjuncts to Ministries and are treated more or less on same lines as in subordinate organizations". It has said that the nomination of civil servants to the Board of Directors or the Committee of Management of many of these State enterprises paves the way to the interference of the Ministry

in their internal management of which the recent experience of the Life Insurance Corporation is held up as a telling example.

27. The third basic pattern is the Government Companies under the Companies Act. I have already indicated the nature and character of these Government Companies under different sections of the Companies Act specially under Sections 617 and 620 of the Companies Act.

28. There is perhaps another kind of State enterprise which may be described to be "non-Government Companies but with Government control". Its example is Chemicals and Allied Products Export Promotion Council. This Export Promotion Council is a company is (sic) incorporated under the Indian Companies Act. It is a company limited by guarantee. Its object is to support, maintain and increase exports of chemical, pharmaceutical and other allied products. Here again the Central Government exercises a good deal of control. It has been held by a learned Single Judge of this Court in *S. K. Mukherjee v. Chemicals and Allied Products Export Promotion Council*¹², that an employee of this Export Promotion Council cannot be said to hold a civil post under the State and as such he was not a civil servant within the meaning of Article 311 of the Constitution. It is said there that such a Council was neither a "public body" nor a public authority nor carrying out statutory duties in appointing or dismissing its employees so that they could not avail of the high prerogative writ under Article 226 of the Constitution.

29. The position, therefore, of Companies registered and incorporated under the Companies Act and particularly of the Government Companies has been the subject of good deal of judicial thought and decisions. A learned Single Judge *In re V. S. Hariharan*¹³, considered the question of the Hindustan Shipyard Ltd. This again is an example of a company registered under the Companies Act, where the Government of India subscribed 80 per cent of the share capital and 10 out of the 13 Directors were nominated by the Government of India and where large subsidies and advances were given by the Union Government from the Shipping Development Fund and the

¹²65 Cal WN 1172: (AIR 1962 Cal 10)

¹³ AIR 1960 And Pra 518

Government of India had the controlling and administrative authority over the Company. Even then it was held that these features would not make any difference to the jural character of the Company and that it still remained a limited liability company. No writ of certiorari was allowed to run against such a company in that case.

30. On an analysis and review of these different types of State enterprises I do not think it is possible to come to any uniform general formula to hold that in no cases where there is a statutory corporation governed by a statute or in no case of Government Companies can there be a civil post or a post under the State within the meaning of Article 311 of the Constitution. I will only repeat the observation which I made in Baroda Kanta Adhikary's case (C. R. 3054 of 1959): (AIR 1963 Calcutta 161) :

".....Attempt to evolve a rigid uniform formula to bring in different establishments of controlled institutions of this kind within the ambit of "civil service" or "civil post under the State" is, in my view, bound to fail. A certain amount of flexible interpretation guided by the facts of each case is a necessity in the present context of the Governmental Administration. The orthodox limits and ideas of a civil service or a civil post Under the

State may not today exhaust all such categories under Article 311(1) of the Constitution. At the same time the other extreme also will be equally inappropriate if it includes all kinds of miscellaneous and hybrid institutions, mostly private or quasi-private with aids or controls or 'sponsoring' financial or otherwise from the Government within "civil service" or "a civil post under the State". Between these two extremes I think the Courts in the present state of law should have to find in each case on its own merits whether a particular service in a particular case is a civil service or civil post under the State within the meaning of Article 311 (1) of the Constitution. No doubt within these two extremes on either side there are many other intermediate stages where one test or another or combination of many tests will determine the decision in a particular case either in favor of the post being under the State or against the post being a civil post under the State within the meaning of Article 311(1) of the Constitution".

In this case I would not rest my decision on the point that the petitioners were not Government servants or holding civil posts under the State. In an appropriate case in future it may be necessary to re-examine and thoroughly consider how far the doctrine of incorporation making the company a legal entity creates a veil that cannot be pierced and extends to prevent service under such a company from being a service under the State within the meaning of Article 311 of the Constitution, specially in such companies like the Hindustan Steel Ltd., where it is admittedly a completely Government owned company, with all the funds of the capital and all the shares owned by the Government, and where the Government is not merely the majority share-holder of 51 per cent but also the 100 per cent owner of the company.

31. I rest my decision in this case on the shorter ground that even assuming that the petitioners were Government servants they come within the principle laid down by the Supreme Court in Parshotam Lal Dhingra's case, AIR 1958 Supreme Court 36. They were by the special terms of their contract of service only temporary employees whose services could be terminated without assigning any reason. There termination also in this case is not a dismissal but a termination in accordance with the terms of the contract. The terminations in these two cases are not punishments. Therefore the Rules must fail.

32. A slight point of difference in the case of the petitioner Bimal Chandra Majumdar was made on the ground, that his letter of appointment did not describe him as a temporary employee but merely as a probationer. The attempted distinction does not help the petitioner Bimal Chandra Majumdar. The letter by which the service was offered to him is dated the 11th of September, 1957 which began by saying "A temporary post of Driver is offered to you etc.". In sub-clause (b) of that offer it was expressly stated as follows :

"You will be on probation for a period of six months or one year (as the company will decide) during which your service will be terminable without notice. The period of probation can be extended or reduced at the discretion of the appointing authority. On satisfactory completion of the period of probation you will be given in the first instance, an offer of appointment for a term of three years during which period your service can be terminated on three month's notice from either side."

33. On the strength of the clause quoted above it has been contended on behalf of the petitioner Bimal Chandra Majumdar that he had become permanent on the facts of the case. The argument briefly is as follows. The offer was made on the 11th September, 1957. The appointment commenced from the 21st September, 1957. The termination took effect on the 14th April, 1959. It is therefore, said that at the date of termination of the service on the 14th April he had become permanent because both the periods of six months and one year had expired.

34. I am unable to accept this argument for the short reason that the clause of the offer quoted above expressly provides that the period of probation can be extended or reduced at the discretion of the appointing authority. Therefore, it does not necessarily mean that because the period of six months or one year had expired from the date of appointment on the 21st September, 1957 therefore, he became permanent on the 21st of September, 1958 before the termination of his service. In fact under the clause itself of the offer it was only on the satisfactory completion of the period of probation that he would be given a fresh offer of appointment for a term of three years. Therefore, until that fresh offer of appointment for a term of three years is given, the petitioner cannot on the terms of his appointment be automatically permanent. No offer of appointment for a term of three years was made by the respondents; therefore he must be regarded as continuing his probation as a temporary appointment. The clear terms of the contract and the offer in this case are against this argument of the petitioner Majumdar of his becoming permanent automatically on the expiry of six months or one year.

35. It is not necessary to distinguish the decision of the Single Judge of this Court in *Jyotirmoyee Sharma v. Union of India*¹⁴, in a suit for declaration and alternatively for damages for wrongful dismissal, because the facts already stated above distinguish that case from the present one. On this point I respectfully accept and follow the view expressed by the Full Bench of the Allahabad High Court in the case of the *Chief Conservator of Forests, Nainital v. D. A. Lyall*,¹⁵ where the principle is said to be that a

¹⁴ AIR 1962 Cal 349

¹⁵ IR 1961 All 450

Government servant on probation is not to be deemed to be confirmed on the expiry of the period of his probation, if no orders confirming him in his substantive post or extending his period of probation are passed by the competent authority. The orders confirming the officer, terminating his appointment, or extending the period of probation may be passed even after the expiry of the period of probation provided the decision is based on the work and conduct during, the period of probation. He acquires the status of a confirmed Government servant on that post only as a result of an affirmative order passed in that behalf by the competent authority. If within a reasonable time the authority does not pass an order confirming him or extending his period of probation or terminating his service it will still not lead to the assumption that he has been confirmed. His remedy would simply then be to apply for a Mandamus calling upon the authority to pass an appropriate order within a certain time. What is a reasonable period within which the authority must pass an order one way or another is a question of fact depending upon the circumstances.

36. For the reasons stated above the Rules are discharged and the petitions dismissed.

37. There will be no order as to costs.
Rules discharged.

