PETITIONER:
SIRSI MUNICIPALITY BY ITS PRESIDENT SIRSI

Vs.

RESPONDENT:
CECELIA KOM FRANCIS TELLIS

DATE OF JUDGMENT18/01/1973

BENCH:
SIKRI, S.M. (CJ)
BENCH:
SIKRI, S.M. (CJ)
RAY, A.N.
PALEKAR, D.G.
DWIVEDI, S.N.
BEG, M. HAMEEDULLAH

CITATION:
1973 AIR 855 1973 SCR (3) 348
1973 SCC (1) 409
CITATOR INFO :
RF 1975 SC1331 (26,32,189)
R 1976 SC 888 (8,16,18,32)
R 1976 SC2049 (17)
RF 1980 SC 840 (7,11)
RF 1987 SC1422 (10)
RF 1990 SC 415 (16)
F 1991 SC 101 (240)

ACT:
Bombay District Municipal Act 1901-Rules made under s. 46-Rules 143 mandatory-Dismissal of employee without reasonable opportunity to show cause void and illegal-State authorities must act within limits of statutory powers-Public employment distinguished from private employment.

HEADNOTE:
The respondent was an employee of the appellant municipality as a midwife in its hospital. On the death of a patient in the hospital an enquiry was held by the Civil Surgeon who found that the death was not due to the negligence of the hospital staff. Thereafter a committee ,appointed by the municipality held an enquiry and made its report. The President of the municipality gave notice to the respondent that as she was responsible for the death of the patient in question du.,- to her negligence she should appear before the Municipal Council at its meeting at 4 p.m. on 25 Match 1955 and give her explanation. She sent her reply denying her negligence and also stated that if 'it was necessary for her to explain anything she should be asked in writing. She did not appear before the Council at the appointed time. When she did appear at 6 p.m. she insisted that the charge against her should be in writing. The municipality dismissed her from service. The respondent thereupon filed a suit for a declaration that the resolution of the municipality dismissing her from service was void. Her first contention was that Rule 143 of the Rules framed by the municipality had been violated as she was ,not given an opportunity of defending herself against the charge. Her second contention was that the resolution was passed by the

municipality on a day when the question of her dismissal was not on the agenda. The High Court upheld the findings of the trial court and the first Appellate court that the respondent was not given a reasonable opportunity to defend herself and thus r. 143 was violated and on this ground upheld the declaration that she was deemed to have continued in service from the date of dismissal to the date of the suit. In appeal by special leave before this Court the municipality contended that the respondent was not entitled to any declaration and that if the dismissal was wrongful the remedy lay in damages.

HELD : (per Sikri, C.J., Ray, Palekar and Dwivedi, JJ.) (i) Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful. or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. [353F-G]

In the case of servant of the State or of local authorities, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to the rules of natural justice or if the dismissal or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of

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nullit y in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies. [353G-H]

The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which arc not sanctioned or supported by statute the courts may exercise, jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant. [353H-354B]

This Court in its decisions has held that the dismissal or termination of the services of employees without complying with the provisions of statute or scheme or order is invalid. This Court has questioned the orders of dismissal and granted appropriate declarations. [356C-D]

Executive Committee of U.P. State Warehousing Corporation Limited. v. Chaandra Kiran Tyagi, [1970] 2 S.C.R. 250 and Indian Airlines Corporation v. Sukhdeo Rai, [1971] 2 S.C.C. 192, distinguished.

S.R. Tewari v. District Board, Agra, [1964] 3 S.C.R. 56, Life Insurance Corporation of India v. Sunit Kimar Mukherjee, [1964] 5 S.C.R. 528, Calcutta Dock Labour Board v. Jaffar Imam & Ors., [1965] 3 S.C.R. 453 and Naraindas Barot v. Divisional Controller, S.T.C., [1966] 3 S.C.R. 40, referred to.

Recent English decisions also indicate that statutory provisions may limit the power of dismissal. [356D-F]

Vine v. National Dock Labour Board, [1956] 3 All.E.R. 939 Barber v. Manchester Hospital Board, [1958] 1 All, E.R. 322. Ridge v. Baldwin, [1964] A.C. 41, Malloch v. Aberdeen Corporation, [1971] 2 All.E.R. 1278 and McClelland v. Northern Ireland General Health Services Board, [1957] 1, W.L.R. 594, referred to.

(ii)In the present case the dismissal of the respondent must be declared to be illegal and void.

Rule 143 imposes a mandatory obligation. The rules were made in exercise of power conferred on the municipality by statute. The rules are binding on the municipality. They

cannot be amended without the assent of the State Government. The dismissal of the respondent was rightly found by the High Court to be in violation of rule 1.43 which imposed a mandatory obligation. The respondent was dismissed without a reasonable opportunity of being heard in her defence. The dismissal by the municipality was without recoding any written statement which Might have been tendered. The dismissal by the municipality was without written order. The dismissal was ultra vires. [357 G-358A]
Per Beg, J. (concurring)-The competence of the Municipal court to pass the resolution dismissing the respondent depended more on compliance with Rule 143 made under s. 46 of the Bombay District Municipal Act. 1901 than on s. 26(8) of the Act. Compliance with such a rule could not be dispensed with by the Council or its presiding authority under s. 26(8) of the Act. [359C-E]
Neither rules nor bye-laws of the municipality could be made or altered by, it unilaterally. 'Both operated as laws which bound the local authority. This was clear from ss. 46 and 48 of the Act.
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An express statutory provision or guarantee is not the only basis of a mandatory duty, or obligation. It can be imposed either by a rule made in exercise of a statutory power or it may arise by implication when exercising a quasi-judicial function. [360G-H]
The present case undoubtedly fell within the category of cases where dismissal must be based upon a, decision arrived at quasi-judicially about a wrong done by the servant. This elementary and basic procedural safeguard flows not merely from an implied rule of natural justice but in the present case it is actually embodied in a rule which cannot be interpreted as anything other than a legal limitation or fetter on the power of the municipality to dismisses. [362F-G]
This could not be a case in which damages for a simple breach of contract could afford adequate relief. Damages could not wipe off the stigma attached to the record of the servant. The law requires that before the future of a servant is allowed to be marred by a blot on the record of the servant concerned,, rules of natural justice must be complied with. [363A-B]
Case law referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 330 of 1967.
Appeal by a special leave from the judgment and order June 16, 1966 of the Mysore High Court at Bangalore in Regular First Appeal No. 33 of 1962.
R. B. Datar and S. N. Prasad. for the appellant.
S. S. Javali, B. P. Singh and D. N. Mishra, for the respondent.
G. B. Pai and C. S. Rao, for, the intervener No. 1.
G Ramchahdra Rao and B. Parthasarathy, for intervener No. 2.
D. V. Patel and K. L. Hathi, for intervener No. 3.
S. Balakrishnan, for intervener No. 4.
B. Datta, for intervener No. 5.
The Judgment of Sikri, C. J., Ray, Palekar and Dwivedi, JJ. was delivered by Ray, J. Beg, J. gave a separate Opinion.
RAY, J.-The question which falls for determination in this appeal by special leave is whether the respondent is entitled to a declaration in a suit filed by her that her dismissal by the appellant municipality referred to as the

municipality was illegal and void.
The respondent was an employee of the municipality. Her services were terminated by a, resolution dated 23 March, 1955. She was dismissed from service. She filed this suit for a declaration that the resolution of the municipality dismissing her from service was void and that she Continued to be in service of the
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municipality and was entitled to emoluments from the date of the resolution up to the date of the suit.
The Municipality is governed by the Bombay District Municipalities Act, 1901 referred to as the Act. Section 46 of the Act provides that the municipality shall make rules in respect of matters enumerated in that section. Clause (g) of section 46 empowers the municipality to frame rules regulating inter alia the period of service, the conditions of service etc.
Rule 183 framed by the municipality provides that except in the case of Chief Health Officer and the Engineer every municipal officer or servant is liable to be discharged at one month's notice. Rule 183 was not invoked by the municipality in the present appeal. Therefore, rule 183 is out of consideration. Rule 143 of the municipality provides two things. First, no officer or servant shall be dismissed without a reasonable opportunity being given to him of being heard in his defence. Any written statement tendered shall be recorded and written order shall be passed thereon. Second, every order of dismissal or confirming dismissal shall be in writing and shall specify the charge or charges brought, the defence and the reasons for the order.
Sometime in February. 1955 one Nayak brought his wife Nagamma to Pandit Cottage Hospital administered by the municipality. Nagamma was admitted to the maternity section. On 15 February 1955 Nagamma died. Nagamma's husband complained to the municipality against the negligence of the staff of the hospital as the cause for the death of Nagamma. The Civil Surgeon held an enquiry. He gave a finding that the death of Nagamma was not due to the negligence of the staff. There was public agitation for a fresh enquiry.
On 7 March 1955 the municipality passed a resolution appointing a committee of four persons to hold an enquiry into the cause of the death of Nagamma and the alleged negligence of the staff of the hospital. The committee recorded the statements of several persons. The committee submitted its report to the Municipal Council.
On 23 March 1955 a meeting of the Municipal Council was held The respondent alleged that though the consideration of the report of the sub-committee and the taking of a decision thereon were not included in the agenda of that meeting, yet the President of the Council sent a notice to the respondent. The communication to the respondent was to the effect that it had come to the notice of the President that the death of Nagamma was due to the negli-
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ence of the respondent, and, therefore, she was to appear-before the Municipal Council at 4 p.m. on 23 March 1955 and give her explanation The respondent received a notice on 23 March, 1955 at about10.30 a.m. She sent her reply denying her negligence. The respondent also stated that if it was necessary for her to explain anything she should be asked questions in writing and she would give her answers in writing.
The respondent did not appear before the Municipal Council at 4 p.m. The respondent came to the municipal hall at about

6 p.m. But that time, the Municipal Council had passed a resolution dismissing the respondent from service. The President asked the respondent what her statement was about negligence. The respondent did not make any oral statement. The respondent insisted that the charge against her should be given in writing and that she would reply in writing. The municipality did not acceds to the respondent's request. The resolution of the municipality was communicated to the respondent on the same day. The respondent handed over charge on 24 March 1955.

Broadly stated, the two contentions of ;the respondent were these. First, rule 143 of the municipality was violated. She was not given a reasonable opportunity of defending herself against the charge. Second, the resolution was passed by the municipality on a day when the agenda before the municipality did not contain any subject of dismissal of the respondent. On these grounds the respondent filed a suit for a declaration that the resolution was illegal, that the status of the respondent as mid-wife in the hospital remained unaffected and that the respondent was an employee of. the municipality as before. The respondent claimed other reliefs.

The contention of the municipality on the other hand was that the rules and bye-laws of the municipality were only for the guidance of the municipality and that the respondent could not challenge the resolution or action of the municipality on the ground of violation of rules and bye-laws.

The High Court upheld the findings of the trial Court and the first Appellate Court that the respondent was not given a reasonable opportunity of defending herself against the charge on which she was dismissed and that the municipality thus violated rule 143. The High Court however did not accept the finding of the courts below that the Municipal Council Was not competent to pass the resolution on the ground of want of notice on the agenda. The High Court also set aside the findings of the courts below that the charge had not been proved against the respondent. The High Court found that the, resolution of the municipality was clearly in violation of rule 143 and declared it as invalid and inoperative.

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The High Court maintained the declaration that the respondent was deemed to have continued- in service from the date of, dismissal to the date:-of the suit.

Counsel on behalf of the municipality contended that the respondent was not entitled to any declaration. In short, it was said on behalf of the municipality that if the dismissal was wrongful the remedy lay in damages.

The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief Act.

The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special

provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific. Relief Act which do not provide for reinstatement of a servant.

The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or-bodies created under statute.

Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation 'of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements Or an grounds which are not sanctioned

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or supported by statute the courts may exercise jurisdiction to declare the act-of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant.

Counsel on behalf of the municipality relies on the decisions of this Court in Executive Committee of U.P. State Warehousing Corporation limited v. Chandra Kiran Tyagi (1970) 2 S.C.R. 250 and Indian Airlines Corporation v. Sukhdea Rai (1971) 2 S.C.C. 192 in support of the contention that even in cases of statutory authorities or bodies a dismissal would only sound in damages and not entitle the dismissed servant to the relief of a declaratory judgment against the order of dismissal or termination.

In Tyagi's case (supra) the Warehousing Corporation was competent to make regulations not inconsistent with the Agricultural Produce (Development and Warehousing) Corporation Act, 1956. The Warehousing Corporation framed regulations. Regulation 1 1 dealt with termination of the service of an employee other than by way of punishment. Regulation 16 dealt with penalties imposed on servant. Regulation 16(3) stated that no punishment other than fine, censure or postponement of increments or promotion was to be imposed on an employee without giving him an opportunity for tendering an explanation in writing and cross examining the witnesses against him and of producing evidence in defence. Tyagi in that case complained that at the enquiry he was not given opportunity to adduce evidence in defence and the persons from whom the Enquiry Officer gathered information were not tendered for cross-examination. The question for consideration by this Court in that case was whether the dismissal of Tyagi could support the grant of a declaration that the dismissal was null and void and that Tyagi was entitled to be reinstated. This Court held that an order made in breach of regulation 16(3) was not in breach of any statutory obligation. It was also held in Tyagi's(1) case (supra) that the relevant Act did not 'guarantee any statutory status to Tyagi nor did it 'impose any obligation' on the Warehousing Corporation in the matter of

dismissal. The ratio in Tyagi's(1) case (supra) was that violation of regulation 16(3) was a breach of terms and conditions of relationship of master and servant and the master was liable for damages for wrongful dismissal. This Court did not find any violation of statutory obligation in Tyagi's(1) case (supra).

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In the Indian Airlines Corporation case (supra) Sukhdeo Rai was suspended on certain charges. Later on he was found guilty of those charges in an enquiry. He was thereafter dismissed. He filed a suit alleging that the enquiry had been conducted in breach of the procedure laid down by regulations made by the Corporal under section 45 of the Act, and, therefore, the dismissal was illegal and void. The High Court held that the Corporation was under a statutory obligation to observe the procedure laid down in the regulations and gave the relief of a declaratory judgment. This Court set aside the declaration granted by the High Court. The ratio in Indian Airlines Corporation case was stated thus

> "The employment of the respondent not being one to an office or status and there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the respondent's employment could be exercised, could the respondent contend that he was entitled to a declaration that the termination of his employment was null and void

In the Indian Airlines Corporation case (supra) regulations framed under section 45 of the Act were said by this Court to be terms and conditions of service but the same did not constitute a statutory restriction as to the kind of contracts which the Corporation could make with the servants or he-ground on which it could terminate. The dismissal in that case was found to be wrongful and not to fall within the vice of infraction of statutory limitation or statutory obligation.

This Court in S. R. Tewari v. District Board Agra (1964) 3 S.C.R. 55, Life Insurance Corporation of India v. Sunil Kumar Mukherjee (1964) 5 S.C.R. 528, Calcutta Dock Labour Board v. Jaffar Imam & Ors. (1965) 3 S.C.R. 453 and Narain-das Barot v. Divisional Controller, S.T.C. (1966) 3 S.C.R. 40 dealt with power of statutory authorities and bodies to dismiss servants. These decisions establish that the dismissal of a servant by statutory including local authorities or bodies in breach of the provisions of the statutes or orders or schemes made under the statute which regulate the exercise of their power is invalid or ultra vires and the, principle of pure master and servant contractual relationship has no application to such cases.

In Tewari's case (supra) this Court said that dismissal, re-moval or reduction of an officer or servant might be effected under

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the rules only after giving the servant a reasonable opportunity of showing cause against the action proposed to be taken. This Court held in Tewari's case (supra) that in three instances a dismissed employee might in appropriate cases obtain a declaratory judgment that the dismissal was wrongful. Those three instances are : first, cases of public servants falling under Article 311(2) of the Constitution; secondly, cases falling under the Industrial Law and, thirdly, cases where acts of statutory bodies are in breach of mandatory obligation imposed by a statute.

In Naraindas Barot's case (supra) this Court held that the order of termination was bad in law since it contravened the provisions of clause 4(b) of the regulation and also the principles of. natural justice.

This Court has held in the decisions referred to that the dismissal or termination of the services of employees without complying with the provisions of statute or scheme or order is invalid. This Court has quashed the orders of dismissal and granted appropriate declarations.

There have been recent English decisions on this subject. These are Vine v. National Dock Labour Board (1956) 3 All E.R. 939; Barber v. Manchester Hospital Board (1958) 1 All E.R. 322; Ridge v. Baldwin 1964 A.C. 41; Malloch v. Aberdeen Corporation (1971) 2 All E.R. 1278 and McClelland v. Northern Ireland General Health Services Board (1957) 1 W.L.R. 594.

These decisions indicate that statutory provisions may limit the power of dismissal. Where such limitation is disregarded a dismissal may be held invalid. In this respect employment under statutory bodies differs from ordinary private employment. Where a public body is empowered to terminate employment on specified grounds or where a public body does not observe the procedure laid down by legislation e.g., improperly delegates power of dismissal to 'another body the courts have declared such dismissal from public employment to be invalid.

The cases of a statutory status of an employee can be also form the subject matter of protection of the rights of an employee under the statute. In Vine's case (supra) the removal of Vine's name from the register was held to be a nullity. The statutory scheme of employment was held to confer on the worker a status.

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An unlawful act of the Board was found to be interference with status. The status of the dock worker was recognised by this in Jaffar Imam's case (supra). In Jaffar Imam's case (supra) the termination of the employment in breach of clause 36(3) of the scheme made by the Central Government in exercise of the power conferred on it by section 4(1) of the Dock Workers (Regulation of Employment) Act 1948 was held to be bad. The round given by this Court was that before any disciplinary action was taken under clauses 36(1) and (2) of the scheme in Jaffar Imam's case (supra) the person concerned was to be given an opportunity to show cause as to why the proposed action should not be taken against him.

Again in Barber's case (supra) under the memorandum issued 'by the Minister of Health the Hospital Board was not to carry into effect the dismissal of consultant before a certain appeal procedure had been completed. Barbar was dismissed without the prescribed procedure being followed. It was held that despite the 'strong statutory flavour attaching to the plaintiff's contract' this was an ordinary contract between master and servant. The House of Lord in McClelland's case held that the dismissal of the plaintiff by the Board in that case on the ground of redundancy of staff was not one of the grounds specified in the terms and conditions of service. It was found that the dismissal could be on specified grounds e.g.,, gross misconduct. A declaration was granted in favour of McClelland on an originating summons as to whether the agreement of service was validly terminated. It was not a case of a Government servant. There was no question of breach of statutory provisions. The employment was based on contract. The Court found that the express power of the Board did not include reduction on the ground of redundancy. The Court

spelt out security of status in employment. The legal basis of the decision in McClelland's case (supra) is- that the post was terminable only on certain specified grounds.

In the present appeal, the preeminent question is whether the dismissal is in violation of rule 143. Rule 143 imposes a mandatory obligation. The rules were made in exercise of power conferred on the municipality by statute. The rules are binding on the municipality. They cannot be amended without the assent of the State Government. The dismissal of the respondent was rightly found by the High Court to be in violation of rule 143 which imposed a mandatory obligation. The respondent was dismissed without a reasonable opportunity of being heard in her defence. The dismissal by the municipality was without recording any written

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statement which might have been tendered. The dismissal by the municipality was without written order. The dismissal was ultra vires..

For the foregoing reasons the High Court was correct in declaring the dismissal of the respondent to be illegal and void. The appeal is therefore dismissed. In view of the fact this court directed the appellant would in any event pay the respondents' costs, the Respondent will be paid these costs.

BEG, J.-The facts of the case before us, which are so clearly set out in the judgment of my learned Brother Ray, need not be repeated by me. I respectfully concur with what has fallen from my learned brother. I would, however, like to 'add some observation on two aspects of the case before us.

Firstly, it was suggested, on behalf of the Municipality, that the local authority had some kind of dispensing power which could enable it to over-ride Rule 143 in the circumstances of the case before us. Rule 143 of the Sirsi Municipality, reads as follows

> "Rule 143(1). No officer or servant be dismissed without a reasonable opportunity being given to him of being heard in his defence. Any written defence tendered shall be recorded and written order shall be passed, thereon.
>
> (2) Every order of dismissal or confirming a dismissal shall be in writing and shall specify the charge or charges brought, the defence and the reasons for the order".

This suggestion was based on the provisions of Section 26, sub. s(8) of the Bombay District Municipal Act 1901 (hereinafter referred to as "the Act") which has really nothing to do with any general power to disperse with the application of any rule. All that Section 26, sub. s(8), empowers the Council to do is to take up a matter for consideration 'and discussion with the permission of the Presiding authority even though it may not have been tabled on the notified agenda for the meeting. this, provision reads as follows

> "26(8). Except with the permission of the presiding authority, which permission shall not be given in the case of a motion or proposition to modify or cancel any resolution within three months after the passing thereof. no business shall be transacted and no proposition shall be
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> discussed at any general meeting unless it has been mentioned in the notice convening such

> meeting or, in the case of a special general meeting, in the written request for such meeting. The order in which any business that may be transacted or any proposition that may be discussed at any meeting in accordance with this subsection shall be brought forward at such meeting, shall be determined by the presiding authority, who in case it is proposed by any member to give priority to any particular item of such business, or to any particular proposition shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal".

Section 26, sub. s. (8), seems initially to have been relied upon only to meet the argument that the impugned resolution could not be passed in the absence of a previous notice of it to the Members of the Council. The competence of the Municipal Council to pass the resolution dismissing the respondent depended more on compliance with Rule 143 made under Section 46 of the Act than on Section 26(8) of the Act. Compliance with such a rule could not be dispensed with by the Council or its presiding authority under Section 26(8) of the Act.

The mode and conditions of appointment, punishment, and dismissal of officers and servants of the Municipality were meant to be regulated by rules which had to be approved by the State Government in the case of the City Municipalities and by the Commissioner in other cases before they could become binding or be altered. Bye-laws could be made on certain specified subjects only after the previous sanction of the State Government or the Commissioner, as the case may be, given to them. Neither rules nor bye-laws of the Municipality could be made or altered unilaterally by it. Both operated as laws which bound the local authority. This was clear from the provisions of Section 46 and 48 of the Act.

In Yabbicon v. King(1) it was said :

> "The District Council could not control the law, and bye-laws properly made have the effect of laws; a public body cannot any more than private persons dispense with laws that have to be administered; they have no dispensing power whatever".

Again, in William Feam & Sons. v. Flaxton Dural Council(2) Sankey, L. J., held that a local authority has "no power" to contravene its own bye-laws properly made. In Kruse Vs. Johnson(3),

(1) (1899) (1 Q.B. 444(a). (2) (1929) ( 1 K. B. 450 @ 467).
(3) (1898) (2Q.B. 91).

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Lord Russel pointed out that a bye-law has the "force of law" within the sphere of its legitimate operation.

Therefore, quite. apart from the basic character of Rule 143 as. a procedural protection against un-meritted punishment by dismissal of servants of the Municipality, I think that the local body was not competent to act upon the assumption that it had any power to dispense with compliance with this rule so long as it stood unaltered.

Secondly, the question arose whether the violation of Rule 143, which admittedly took place, made the, dismissal of the respondent merely illegal, for which award of damages was sufficient remedy, or made it void and ineffected, so that a declaration of the rights of the respondent as a servant of the Municipality could also be given despite the provisions of Section 21 Specific Relief Act. It is true that,

ordinarily, a Court will not give a declaration which will have the effect of enforcing a contract of personal service and will restrict relief to the injured party to damages for breach of contract. But, the principles which are applicable to the relation of a private master and a servant, unregulated by statute, could not apply similarly to the case of a public statutory body exercising powers of punishment fettered or limited by statute and relevant rules of procedure.

Although Indian Airlines Corporation v. Sukhdeo Rai(1), which was cited on behalf of the appellant, could perhaps be distinguished on facts, I am unable to reconcile the decision of this Court in the case of Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi (2) , with our view in the case before us. In Tyagi's case (supra), as in the case before us, no express statutory provision was contravened by the impugned dismissal, but a rule, made under powers conferred by statute, which protects the servant concerned from punishment by way of dismissal contrary to rules of natural justice, was violated. If a guaranteed "statutory status" means only an express statutory protection, such as the one found in Article 311 of the Constitution. and a rule made under a statutory power is not enough to confer it, there was none either in Tyagi's case (supra) or in the case before us. An express' statutory provision or guarantee is not the only basis of a mandatory duty or obligation. It can be imposed either by a rule made in exercise of a statutory power or it may arise by implication when exercising a quasi-judicial functions.

Even when there was no specific rule on the subject. like Rule 143 in the case before us, this Court has held that violation of im-

(1) [1971] Supp. S.C.R. 510.

(3) [1970] (2) S.C.R. 250.

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plied rules of natural justice, in exercise of a quasi-judicial statutory power, results in a legally void decision. It was so held because the obligation to observe rules of natural justice was imperative in such a situation. In State, of Orissa v. Dr. (Miss) Binapani Rai (1), this Court said

> "This rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case".

This principle would be equally applicable to local Government bodies which fall within the definition of

"State" given in Article 12 of the Constitution.
Byles, J., in Cooper v. The Board of Works for Wendsworth District (2) , said long ago about the primordial character of the opportunity to be heard before punishment :

> "The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God) 'where art thou ? Hast thou not eaten of the tree whereof I commanded those that thou shouldst not eat'?"

Such a principle has been described as a principle of "Universal jurisprudence" by Mahomood, J., in Queen Empress v. Ponhi
In Ridge v. Baldwin (4) Lord Reid observed (at page 71)

> "The authorities on the applicability of the Principles of natural justice are in some confusion and so I

(1) [1967] (2) S.C.R. 625.
(3) I.L.R. 13 Alld. 171.
(2) (1863) 14 C.N.S. 180.
(4) 1964 A.C. 40 @ 65.
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> find it necessary to examine this matter in some detail. The principle audi alteram partem goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority. In modem times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally insusceptible of exact definition but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equal

ly capable of serving as tests in law,

> and natural justice as it had been interpreted in the courts is much more definite than that. It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile in that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether to dismiss a chief constable. So I shall deal first with cases of dismissal These appear to fall into three classes, dismissal of a servant by his master, dismissal from an office held during pleasure, and dismissal from an office where there must be something against a man to warrant his dismissal".

The case before us undoubtedly falls within the category of cases where dismissal must be based upon a decision arrived

at quasi-judicially about a wrong done by the servant. This elementary and basic procedural safeguard flows not merely from an implied rule of natural justice, but. in the case before us, it is actually embodied in a rule which 'we cannot interpret as anything other than a legal limitation or fetter on the Dower of the Municipal authority to dismiss. It constitutes a condition precedent to a valid decision to dismiss whether contained in a resolution or an order of the local authority. As the local Government authority had failed to see that a mandatory duty. embodied in a basic rule, had been carried out. the resulting decision must necessarily be held to be-void.

If the decision to dismiss the respondent was void and inoperative in law, there seems no reason why a declaration to that effect be not granted. Such a case would be covered by the principles

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laid down by this court in : Life Insurance Corporation of India v. Sunil Kumar Mukherjea & Ors. (1) and S. P. Tewari V. District Board Agra & Anr.(2). This could not be a case in which damages for a simple breach of contract could afford adequate relief. Damages could not wipe off the stigma attached to the record of the servant. The law requires that, before the future of a servant is- allowed to be marred by a blot on the record of the servant concerned, rules of natural justice must be complied with.

1, ;therefore, concur with the judgment and the order proposed by my learned Brother Ray.

G.C.

(1) [1964] (5) SCR (52)

(2) [1964] (3)SCR (55)

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