HIGH COURT OF GUJARAT

MANAGING DIRECTOR & 1 OTHER(S)
Versus
AMRUTLAL DHANJIBHAI PATEL

Date of Decision: 25 November 2022

Citation: 2022 LawSuit(Guj) 7237

Hon'ble Judges: Dr A P Thaker

Eq. Citations: 2023 1 GLH 77

Case Type: Second Appeal

Case No: 81 of 2000

Subject: Civil, Constitution, Contract

Acts Referred:
Constitution Of India Art 311, Art 12
Code Of Civil Procedure, 1908 Sec 100
Specific Relief Act, 1963 Sec 38(1), Sec 39, Sec 41, Sec 41(e), Sec 2(a), Sec 38, Sec 41(h)

Final Decision: Appeal allowed

Advocates: Dharmesh Devnani, Kaustubjh Srivastava, Nanavati Associates, Yatin Oza, Nilesh Pandya, Devendra G Rana

Cases Referred in (+): 24

Dr. A. P. Thaker, J.

[1] The present Appeal has been filed under Section 100 of the Civil Procedure Code (CPC) by the original defendants against the judgment and decree dated 23.11.1994 passed by the learned 2nd Extra Assistant Judge of Panchmahal District at Godhra, in Regular Civil Appeal No. 51 of 1994 whereby the Appeal filed by the original plaintiff came to be allowed and the judgment and decree dated 4.10.1994 of the trial Court passed in Regular Civil Suit No. 52 of 1986 came to be set-aside.

[2] The Appellant is the defendant before the trial Court and the respondent is the plaintiff before the trial Court. For the brevity and convenience, the parties are referred

to in this judgment as per the character assigned to them before the trial Court i.e. defendant and plaintiff respectively.

[3] The present appeal has been admitted on 17.8.2021 on the following two substantial questions of law:

1. Whether the appellant Company can said to be 'State' within the meaning of Article 12 of the Constitution of India, inspite of being format under Companies Act, 1956?

2. Whether the respondent Plaintiff can be granted relief under the Specific Relief Act, which is a relief in equity?

[4] The brief facts of the matter are as under:

4.1 The plaintiff has filed the suit for declaration and injunction, inter alia, contending that he was serving as Project Supervisor in the Gujarat State Forest Development Corporation Limited i.e. the defendant since last 8 years. It is contended that the plaintiff was serving honestly and there was no any adverse remarks passed against him in past and his service was clean and dot-less. It is also contended that there was not a single complaint against him.

4.2 It is contended that the defendants were trying to harass the plaintiff for some reasons and also tried to relieve him on any account. It is contended that the defendants issued show-cause notice to the plaintiff on 5.6.1994 levelling the charges of monetary misappropriation, etc. It is contended that as certain documents were required to reply the said Notice, the plaintiff demanded the documents by his letter dated 19.10.1984. It is contended by the plaintiff that no such documents were supplied to him. That in January, 1985, a preliminary inquiry was held in the Office of the defendant No.1 wherein oral statements of plaintiff was recorded and thereafter certain witnesses were called and statement of them were recorded in absence of the plaintiff.

4.3 It is contended that thereafter, the preliminary inquiry officer submitted his report, however, no regular inquiry was conducted nor any witnesses were examined nor any documents were produced in the evidence. It is also contended that the documents were also not supplied to the plaintiff. But straightway, the defendant No.1 sent a letter No. Mahak/ Inquiry/434/7205 dated 15.5.1985 in the form of show-cause notice, stating that why plaintiff should not be terminated from the service of the respondent i.e. Gujarat State Forest Development Corporation Limited. The plaintiff replied the same in detailed and he demanded personal hearing. It is contended by the plaintiff that no opportunity of being heard was

extended to him. Thereafter, on 23.3.1986, he suddenly received a sealed cover from the defendants bearing No. 6393 and on opening the said cover, the plaintiff found that the Manager (Technical) instructed the defendant No.2 to relieve the plaintiff. That, he requested defendant about the miserable condition and financial constrain of his family and to consider his case even on humanitarian ground.

4.4 It is alleged by the plaintiff that the defendant has not followed the principles of natural justice by not supplying the documents which were sought by him for tendering his reply to original notice and by not taking regular/ full-fledged inquiry after a preliminary inquiry and thereby not giving any chance to cross-examine the witnesses and also not providing personal hearing to the plaintiff though he had sought for. The plaintiff, by filing suit, claimed declaration to the effect that the action of the defendant Nos. 1 and 2 dismissing his service is unjust, illegal and against the principles of natural justice and in the alternative, in case the Court comes to the conclusion that the plaintiff was already relieved from the service, then in that case, he should be reinstate in his service from the date of his relieve from the service with all arrears and his service be treated as continuous one for all purposes.

4.5 It is also the case of the plaintiff that he has filed the suit No. 189/1986 on 13.3.1981 against the proceedings initiated by the defendants for dismissing plaintiff from his service.

[5] It appears from the record that the defendants have jointly filed their written statement at Exh-17 wherein it is contended that the plaintiff has no right to file such type of suit. It is also contended that if the plaintiff is dissatisfied with the order of the Managing Director, then he could prefer an appeal under the Gujarat State Corporation Rules, 1976 and thus, till such course is adopted by the plaintiff, he is not entitled to get any relief in the suit. It is also contended that the Corporation is an limited Institution and there is no rules of prior hearing for the proposed punishment. It is also contended that the plaintiff had earlier filed RCS No. 189/1986 and as injunction was vacated in earlier Suit, the plaintiff has filed the present Suit subsequently. It is also contended that the Suit is barred by principles of res-judicata. It is contended that the Suit is false. It is contended that the dismissal order has already been served upon the plaintiff on 14.6.1986 at 2.00 p.m. and the said order is already implemented. It is contended that the plaintiff was not serving honestly and as per the Rules of the Corporation and, therefore, the Corporation was constrained to relieved the plaintiff from the service. It is contended that on 5.4.1984, when the plaintiff was serving at Jhojh, at that time, some illegal and irregularities were found in the work of the plaintiff. That therefore, show-cause notice was served upon him. It is also contended that the plaintiff has not come with clean hands. The defendant have denied the

allegations made by the plaintiff in his plaint and has submitted that at the time of filing of the Suit the plaintiff was not in service and ultimately it has prayed to dismiss the Suit.

[6] It appears from the record that the trial Court has framed following issued at Exh-18 in vernacular language, which on translation, would read as under:

1. Whether the plaintiff proves the contention made in Para-2 of the plaint?

2. Whether the defendant proves that the plaintiff's suit is barred by res-judicata?

3. Whether defendant proves that they have relieved plaintiff at 2.00 p.m. on 14.3.1986?

3(a) Whether the Suit of the plaintiff is tenable?

3(b) Whether this Court has jurisdiction to entertain the Suit?

4. Whether the plaintiff is entitled to get relief as claimed in Para-8 of the plaint?

5. If yes, what relief he is entitled?

6. What order and decree?

[7] On the basis of the pleadings of the parties and evidence on record and hearing both the sides, ultimately, the trial Court has answered Issue Nos. 1, 2, 3(a), 4 and 5 in negative and Issue Nos. 3 and 3(b) have been answered in affirmative and ultimately the learned Civil Judge (S.D.) has dismissed the Suit of the plaintiff with costs.

[8] Being aggrieved and dissatisfied with dismissal of the Suit by the trial Court, the original plaintiff has preferred Regular Civil Appeal No. 51/1994 before the District Court Panchmahals @ Godhra. The same came to be heard by learned 2nd Extra Assistant Judge of Panchmahal District at Godhra. It appears from the record that the First Appellate Court has framed point of determination in Para-7 of the impugned Judgment to the following effect:

1. Whether the judgment and decree passed by the learned Civil Judge are required to be set-aside?

2. Whether the defendant No.1 proves that the Suit is barred by res-judicata?

3. Whether the defendant- respondent proves that the trial Court has no jurisdiction to entertain the present Suit?

4. Whether the appellant proves that he is entitled to get any relief that is claimed?

5. What order?

[9] After hearing learned advocates for the parties and material placed on record, ultimately the first Appellate Court has answered the aforesaid Point Nos. 1 and 4 in affirmative and Point Nos. 2 and 3 in negative and ultimately set-aside the decree of the trial Court and has passed decree in favour of the plaintiff.

[10] Being aggrieved and dis-satisfied with the aforesaid judgment of the first Appellate Court, the original defendant has preferred this Second Appeal, on various grounds. It is contended that the Appellate Court has not considered the evidence on record in proper perspective and has mis-read the entire evidence. It is also contended that the Appellate Court has set out a totally new case and has given the findings on the basis of presumptions and not on the evidence on record. It is also contended that the Appellate Court has set-aside the findings of the trial Court without giving any reason and without reversing the clear findings given by the trial Court. It has also contended that the Appellate Court has erred in holding that the Appellant Company is a 'State' within the meaning of Article 12 of the Constitution of India and Article 311 will be applicable to it. According to defendant Appellant, the Appellate Court failed to appreciate that the Appellate Company is formed under the Companies Act, 1956 and has its own service Rules which are binding on both the Appellate Company as well as respondent i.e. plaintiff.

10.1 It is also contended that the Appellate Court erred in holding that the principles of natural justice were not followed. It is contended that the trial Court has clearly given findings to the effect that after preliminary inquiry, full-fledged final inquiry was held and principles of natural justice were observed. It is also contended that the Appellate Court has totally ignored the relevant document and material placed on record to the effect that the respondent-plaintiff were given repeated opportunity of hearing to which the respondent-plaintiff failed to avail. It is also contended that the Appellate Court has totally ignored the findings given by the trial Court of the fact that the respondent-plaintiff has not come with clean hands in as much as on one hand the plaintiff has submitted that he was still serving in the Appellant Company at the time of filing of the Suit, and on the other hand, he has admitted in his deposition that he was terminated pursuant to inquiry and has not filed any appeal.

10.2 It has also contended that the Appellate Court has failed to consider the fact that the Suit itself is barred by principles of res-judicata as the earlier Suit for the same cause of action was filed and no relief was granted to him. On all these

grounds, the defendant plaintiff has prayed to allow the present appeal by setting aside the impugned judgment and decree passed by the learned 2nd Extra Assistant Judge of Panchmahal District at Godhra in Civil Regular Appeal No. 51 of 1994.

[11] Heard Mr. Dharmesh Devnani, learned advocate with Mr. Kaustubh Srivastava, learned advocate for the Nanavati Associates for the appellant- defendant and Mr. Yatin Oza, learned Senior Counsel assisted by Mr. Nilesh Pandya and Anurag Rathor, learned advocates for respondent-plaintiff at length. Perused the material placed on record and the judgment of both the lower Courts below and the decisions cited at bar.

[12] Mr. Dharmesh Devnani, learned advocate for the appellant - defendant has vehemently submitted that the plaintiff has challeged the dismissal order before the Civil Court on the ground of not providing sufficient opportunity of being heard as well as non-supply of documents. Mr. Devnani has vehemently submitted that the plaintiff came to be dismissed on 14.3.1986. He has further submitted that the plaintiff has also filed a suit earlier in Godhra wherein he could not get appropriate relief and, thereafter, he has filed the present Suit, which is clearly barred by law of res-judicata. While referring to the judgment of the trial Court, Mr. Devnani has submitted that the trial Court has, after perusing the material placed on record, dismissed the Suit of the plaintiff. He has submitted that against which the plaintiff has preferred the First Appeal which came to be allowed by the first Appellate Court and decree has been passed in favour of the respondent-plaintiff. According to Mr. Devnani, considering the alternative relief claimed in the plaint by the plaintiff, for his reinstatement, the Civil Court cannot grant such relief under the Specific Relief Act. He has also submitted that the Appellant is a Company incorporated under the Companies Act, 1956 and, therefore, it cannot be treated as a 'State' within the meaning of Article 12 of the Constitution of India and, therefore, Article 311 of the Constitution of India would not be applicable in the present case. He has also submitted that the Appellant - defendant is not a Statutory Body and, therefore also, the provisions of Article 311 would not be applicable.

12.1 Mr. Dharmesh Devnani, learned advocate has also vehemently argued that the Appellant Company is not governed by any of the Service Rules of the Government. He has also submitted that the various Rules of the Appellant has been filed at page-147 of the Paper-book. He has submitted that as per these Rules, the plaintiff has not preferred any Appeal before the appropriate Forum and, therefore, without approaching the concerned Appellate Authority, the Suit itself is not maintainable and it is premature. He has submitted that the trial Court has properly appreciated the facts and law applicable to the present case and has rightly dismissed the Suit of the plaintiff. He has submitted that, however, the Appellate Court has failed to

appreciate the facts and law applicable to the facts of the case and has grossly erred in setting aside the impugned judgment of the trial Court dismissing the Suit. He has submitted that the impugned judgment and order of the Appellate Court is not sustainable in the eyes of law and deserves to be set-aside. He has also submitted that substantial question of law raised in this Second Appeal needs to be decided in favour of the Appellant. He has submitted that as the Appellant Company is not a "State " within the meaning of Article 12 of the Constitution of India, the Suit against the Company is not maintainable and, therefore, deserves to be dismissed, which was rightly dismissed by the trial Court.

12.2 Mr. Devnani has also submitted that since this is a Contract of Service, he cannot get relief under the provisions of Specific Relief Act for re-instatement in service. He has prayed to allow the present Appeal and to set-aside the impugned judgment and decree passed by the first Appellate Court. For his submissions, he has relied upon the following decisions:

1. In the case of Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others, 1976 2 SCC 58;

"2. The appeal arises in the following circumstances. The appellant which is the Executive Committee of Vaish Degree College in the District of Muzaffarnagar was registered under the Registration of Cooperative Societies Act as an institution for imparting education. The affairs of the College were managed by the Executive Committee of the Vaish College which is the appellant in this case. In the year the Vaish Degree College was affiliated to the Agra University and as a consequence thereof the College agreed to be governed by the provisions of the Agra University Act and the statutes and ordinances made thereunder. With the establishment of the Meerut University some time in the year 1965 the Vaish Degree College got affiliated to the Meerut University. The plaintiff/respondent was appointed as Principal of the College on permanent basis with effect from July 1, 1964 and his appointment as Principal was formally approved by the Vice-Chancellor of the Agra University. Two years later it appears that differences arose between the Executive Committee of the College and the plaintiff/respondent resulting in allegations and counter allegations and culminating in a notice served by the Executive Committee on October 24, 1966 on the plaintiff/respondent directing him not to discharge the duties of the Principal and another letter was sent to defendant No. 4 a member of the staff of the College to officiate as Principal in place of the plaintiff/respondent. This was fol lowed up by a counter-notice by the plaintiff/respondent to the Executive Committee that the notice sent to him was illegal and the respondent also asked defendant No. 4 not to assume charge of the Principal. On March 12, 1967, the Executive Committee by a resolution terminated the services of the

plaintiff/respondent with effect from October 24, 1966 and this resolution was amended by another resolution on March 29, 1967. Even before the formal resolution terminating the services of the plaintiff/respondent was passed it appears that the plain tiff had filed the present suit on October 28, 1966 before the Court of the First Additional Civil & Sessions Judge, Muzaffarnagar which was transferred for disposal to the Court of the Munsif, Kairana.

"10. We would first deal with the important question, which has been the sheet-anchor of the arguments of the learned counsel for the respondent as also the main basis of the judgment of the Full Bench of the Allahabad High Court, as to whether or not the appellant Executive Committee can be said to be a statutory body in the circumstances of the present case. It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Others this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A. N. Ray, C.J., observed as follows:

"A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute."

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountain-head of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body. The High Court, in our opinion, was in error in holding that merely because the Executive Committee followed certain statutory provisions of the University Act or the statutes made thereunder it must be deemed to be a statutory body. In fact the Full Bench of the High Court relied on three

circumstances in order to hold that the Executive Committee was a statutory body, viz., (i) that it was affiliated to the Agra University which was established by the statute; (ii) that there were certain mandatory provisions in the Agra University Act which were binding on the Executive Committee; and (iii) that the Executive Committee was governed by the statutes framed by the Agra University. In our opinion, none of these factors would be sufficient to alter the character and nature of the Executive Committee and convert it into a full fledged statutory body. To begin with the Executive Committee had an independent status having been registered under the Registration of Co-operative Societies Act and was a self-governed or an autonomous body. It was affiliated to the Agra University merely for the sake of convenience and mainly for the purpose that the courses of studies prevalent in the College may be recognised by the University."

"14. Thus in view of the decisions of this Court regarding the circumstances under which the institution can be treated as a statutory body we are unable to agree with the view taken by the Allahabad High Court that the Executive Committee was a statutory body merely be cause it was affiliated to the University or was regulated by the provisions of the University Act or the statutes made thereunder. We accordingly hold that the decision of the Full Bench of the Allahabad High Court on this point is legally erroneous and must be overruled."

"20.Assuming for the sake of arguments, but not deciding that this decision has extended the scope of the exceptions, so that the appellant Executive Committee though a non- statutory body will still be bound by the statutory provisions of law, let us see what is the position. It would appear that under s. 25-C (2) of the Agra University Act corresponding to similar provisions in Kanpur and Meerut Universities Act of 1965 which runs thus:

"Every decision by the Management of an affiliated college, other than a college maintained by Government, to dismiss or remove from service a teacher shall be reported forthwith to the Vice-Chancellor and subject to provisions to be made by the Statutes shall not take effect until it has been approved by the Vice-Chancellor." it was incumbent on the Executive Committee of the College to have taken the previous approval of the Vice-Chancellor before terminating the services of the plaintiff/respondent. Reliance was placed by the learned counsel for the respondent on the words "shall not take effect until it has been approved by the Vice-Chancellor". It was urged that there has been an infraction of a mandatory provision of the Act itself which is undoubtedly binding on the appellant Executive Committee and the resolution of the Executive Committee terminating the services of the respondent is not only invalid but completely without jurisdiction, and, therefore, the plaintiff/respondent is entitled to the injunction sought for. It is

common ground that the procedure enjoined in sub-s. (2) of s. 25-C of the Agra University Act was not at all followed by the Executive Committee and there can be no doubt that the Executive Committee has been guilty of this default. The question remains whether even if there has been a violation of the mandatory provisions of the statute, should we in the exercise of our discretion grant a declaration or an injunction to the plaintiff/respondent in the peculiar facts and circumstances of the present case ? It is well settled that a relief under the Specific Relief Act is purely discretionary and can be refused where the ends of justice do not require the relief to be granted. Mr. Ramamurthi learned counsel for the plaintiff/respondent submitted that the question of discretion would arise only in case where the High Court or this Court is acting in a writ jurisdiction and not in a suit. We are, however, unable to agree with this argument because the exercise of discretion is spelt out from the provisions of the Specific Relief Act and the common law and it applies as much to the writ jurisdiction as to other action at law."

2. In the case of State Bank of India and Others v. S.N.Goyal, 2008 8 SCC 92;

"17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief damages or reinstatement with consequential reliefs is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the

employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : Dr. S. Dutt vs. University of Delhi, 1958 AIR(SC) 1050; Executive Committee of UP State Warehousing Corporation Ltd. Vs. Chandra Kiran Tyagi, 1970 2 SCR 250; Sirsi Municipality vs. Cecelia Kom Francies Tellis, 1973 3 SCR 348; Executive Committee of Vaish Degree College vs. Lakshmi Narain, 1976 2 SCR 1006; Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir, 1981 AIR(SC) 122; and Dipak Kumar Biswas vs. Director of Public Instruction, 1987 AIR(SC) 1422)."

3. In the case of Maharashtra State Cooperative Housing Finance Corporation Limited v. Prabhakar Sitaram Bhadange, 2017 5 SCC 623;

"9. We may also clarify one more aspect. Contract of personal services is not enforceable under the common law. Section 14, read with Section 41(e) of the Specific Relief Act, 1963, specifically bars the enforcement of such a contract. It is for this reason the principle of law which is well established is that the Civil Court does not have the jurisdiction to grant relief of reinstatement as giving of such relief would amount to enforcing the contract of personal services. However, as laid down in the cases referred to above, and also in Executive Committee of Vaish Degree College, Shamli & Ors. v. Lakshmi Narain & Ors.[3], there are three exceptions to the aforesaid rule where the contract of personal services can be enforced:

(a) in the case of a public servant who has been dismissed from service in contravention of Article 311 of the Constitution of India;

(b) in the case of an employee who could be reinstated in an industrial adjudication by the Labour Court or an Industrial Tribunal; and

(c) in the case of a statutory body, its employee could be reinstated when it has acted in breach of the mandatory obligations imposed by the statute.

10. Even when the employees falling under any of the aforesaid three categories raise dispute qua their termination, the Civil Court is not empowered to grant reinstatement and the remedy would be, in the first two categories, by way of writ petition under Article 226 of the Constitution or the Administrative Tribunal Act, as the case may be, and in the third category, it would be under the Industrial Disputes Act. An employee who does not fall in any of the aforesaid exceptions cannot claim reinstatement. His only remedy is to file a suit in the Civil Court seeking declaration that termination was wrongful and claim damages for such wrongful termination of services. Admittedly, the appellant Corporation is not a

'State' under Article 12 of the Constitution. The respondent also cannot be treated as a Government/public servant as he was not under the employment of any Government. He was also not 'workman' under the Industrial Disputes Act as he was working as Manager with the appellant Corporation.

I1. In the aforesaid conspectus, we have to examine as to whether this power which is available with the Civil Court to grant damages is now given to the Cooperative Court under Section 91 of the Act. We may also mention at this stage that some of the States have statutes which contain provisions regarding management and regulations of the cooperative society, where specific machinery under these State Cooperative Societies Acts is provided for resolution of employment disputes as well, between the cooperative societies and its employees, that too by excluding the applicability of labour laws. No doubt, in such cases, the disputes between the cooperative societies and it employees, including the workmen, would be dealt with by such machinery and the general Act, like the Industrial Disputes Act, would not be applicable (See Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner & Ors.) and Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd). Pertinently, in the instant case, Section 91 specifically excludes the disputes between the cooperative society as employer and its 'workmen'. Ultimately, the outcome depends upon the powers that are given to the Cooperative Court or the stipulated tribunal created under such Acts. It is in this hue we have to find out as to whether Section 91 of the Act at hand empowers Cooperative Courts to decide such disputes."

4. In the case of Rambhai Ishwarbhai Patel & Anr. v. Gujarat State Fertilizers and Chemicals Ltd. & ors, 2011 2 GLR 1197;

"12. On hearing the parties, we come to the following conclusions so far as Gujarat State Fertilizers and Chemicals Limited:-

(i) The Company has been constituted under the Companies Act and not by any Act of the Legislature.

(ii) The 'State' has no role in the matter of functioning of the Company. It does not exercise any financial, functional or administrative control over the Company, much less an unusual degree of control over the management and policies of the Company.

(iii) Acquisition of shares and other matters pertaining to management and affairs of the Company are governed under the Act.

(iv) Terms and conditions of service of employees of the Company are governed by providing negotiations and mutual undertaking, like any other private contract between employer and employee, and there are no statutory rules or regulations framed by the 'State' laying down the conditions of service of the employees of the Company.

(v) The State Government does not hold any shares in the Company.

(vi) The 'State' nominates only two Directors, who are industrialists; rest of the Directors, who are in majority, are nominated by others.

(vii) The business and other activities of the Company are purely of commercial nature, which neither performs any public function nor public duty. It does not carry on its business for the benefit of the public. Thus, the cumulative factors together show that Gujarat State Fertilizers and Chemicals Limited is not an instrumentality of the 'State'."

"14. The respondent-Company has raised the question of maintainability of the petition on the ground that it is not a 'State' within the meaning of Article 12 of the Constitution, and, therefore, the writ petition under Article 226 of the Constitution is not maintainable."

"20. Learned counsel for the petitioners would contend that by the aforeasaid letter dated 4th November 2008, Government of Gujarat has clarified that Gujarat Narmada Valley Fertilizers Company Limited and Gujarat State Fertilizers and Chemicals Company Limited and two other Companies are also required to take prior approval pursuant to the letter dated 14th March 2008, and therefore, the respondent-Company is a Government of Gujarat Undertaking. The respondent-State of Gujarat has filed a reply affidavit and stated that the aforesaid Resolution was issued to the State Public Sector Enterprises, such as Boards, Corporations and the Government Companies u/Sec.617 of the Companies Act, wherein majority of the shareholding is of the State Government with the assistance of financial institutions, debenture holders and/or other organizations, which are governed by their own constitutions, memorandum of association and/or articles of association. In such cases, since the Government is required to effectively monitor the working of the State Public Sector Enterprises, in order to fulfil the development, the Resolution dated 14th March 2008 was issued.

So far as the issue of control and supervision with regard to other joint sector companies, such as Gujarat Narmada Valley Fertilizers Company Limited and Gujarat State Fertilizers and Chemicals Ltd. is concerned, the same is examined by the State Government in the letter dated 4th November 2008. The Government has

found that it has control over such companies only to the extent of its shareholding and from that point of view, the broad objective of the State can be taken care of by directing its officers posted in such companies to seek prior approval of the Government before putting up the matters concerning the interest of the 'State' before the Board of such joint sector companies. It has taken a specific plea that for the purpose of Article 12 of the Constitution of India, such companies could not be said to be under deep and pervasive administrative, functional and financial control of the State Government. These are essentially entities managed by their respective Boards of Directors as provided by their respective Memorandum of Association and Articles of Association.

21. In the present case, there is nothing on record to suggest that the State Government has any share in Gujarat Narmada Valley Fertilizers Company Limited as no specific evidence is brought on record. Gujarat State Fertilizers and Chemicals Limited , which has 19.80% share, is not a 'State' within the meaning of Article 12 of the Constitution of India. The State of Gujarat has taken a specific plea that as it has no deep and pervasive administrative, functional and financial control and the respondent-Company is an entity managed by its Board of Directors."

5. Judgment of the Division Bench of this Court dated 21.1.2022 passed in LPA No. 613/2021 in SCA No. 17055 of 2015 and allied matters in the case of State of Gujarat v. PWD and Forest Employees Union, especially Para-5 and 5.1 thereof:

"5. Having noted the factual conspectus and legal controversy as above, there cannot be overlooking of the factum that respondent Corporation is a company registered under the provisions of the Companies Act. It functions as an independent entity distinct from the Department of the State Government. The distinguishing features of the Corporation on this count came to be noted by the learned Single Judge in paragraph No.6.2. Those features are about its incorporation under the Companies Act, 1956 and the extent of share holding by the State Government and the Central Government and that the GSFDC is an independent autonomous body. It is rightly stated the learned Single Judge and it is controlled by the Board of Directors appointed by the Governor as per Article 85 of the Articles of Association. It was further noted that as per Article 95 of the Articles of Association, it is the Managing Director who is in charge of the affairs of the management who exercises his powers to have the overall superintendence, control and management of the company. The Memorandum of Association of respondent Corporation also specifies the objectives of the Corporation which is inter alia to undertake proper and scientific exploration of the forest produce. It was also noted that as per the Resolution dated 14th March, 2008 of the Finance

Department of the State Government, monitoring and working of the public sector enterprises which are independent bodies being other than the government departments, is differently provided for.

5.1 Therefore, there is no gainsaying that respondent Corporation is a separate legal entity. The respondent Corporation has its own staff set up. The affairs and functioning is under separate regulations including the service regulations. There is no budgetary assistance from the State Government to the respondent Corporation and that it has its own financial resources and the budget. It exists and functions with its own objective and mechanism. The employees of the Corporation are not a class homogeneous to the employees of the State Government. It in no way could be viewed as a department of the government. There are no overriding aspect that may dilute the otherwise independent functional character of the Corporation."

[13] Per contra, learned Senior Counsel Mr. Yatin Oza for the respondent Plaintiff has submitted that there is no pleading of the defendant-appellant before the trial Court that it is not a State instrumentality. He has also stated that the appellant defendant has not raised the plea that it is not 'State' within the meaning of Article 12 of the Constitution of India, and that the Government Rules are not applicable to it. He has submitted that therefore now the plea raised that the appellant Company is not a 'State' within the meaning of Article 12 of the Constitution of India, cannot be entertained in the present Second Appeal.

13.1 Mr. Oza, learned Senior Counsel has also submitted that during the pendency of the Suit itself, the Appellant-defendant has moved an application at Exh-132 for transferring the Suit to the Gujarat State Service Tribunal wherein it is averred that the defendant is a Government undertaking and there are service Rules applicable, as per the Gujarat State Forest Development Corporation Rules. Mr. Oza has also drawn attention of this Court to the averment made in the said Application, wherein, it was prayed by the Appellant- defendant that the matter to be transferred to the Services Tribunal. Mr. Oza has also referred to the Order passed by the trial Court below the said application whereby it has rejected the said application. Mr. Oza has also invited attention of this Court to the order dated 26.8.1991 passed by this Court in Civil Revision Application No. 172/1991 preferred against the Order passed by the learned Civil Judge (J.D.) below Exh-132 in the Suit itself wherein this Court has held that as no Service Tribunal has been constituted, the Suit needs to be decided by the Civil Court and accordingly this Court had directed the Civil Court to proceed with the matter in accordance with law. While referring to this proceedings, Mr. Oza has submitted that when defendant - appellant itself has accepted the position that it is a Government undertaking, then, definitely the Gujarat Civil Services Rules would be applicable

and the provisions of Article 12 of the Constitution would be applicable to the appellant- defendant. Mr. Oza has also submitted that the Service Tribunal exercise powers over the Government servant and, therefore, indirectly the Appellant defendant has accepted that it is a 'State' within the meaning of Article 12 of the Constitution of India.

13.2 Mr. Oza, learned Senior Counsel has also submitted that even the Appellant - defendant has not prayed before the trial Court for framing of issues in this regard. He has also submitted that even considering the Service Rules, which has been filed before the trial Court, before disposal of the services of the employee, necessary departmental inquiry needs to be initiated and appropriate opportunity of being heard, needs to be extended to the employee concerned. Mr. Oza, learned Senior Counsel while referring to the evidence on record, has submitted that in present case, no such opportunity of being heard is provided to the plaintiff - respondent. He has also submitted that the Inquiry Officer has been examined in the matter who has specifically admitted in his cross-examination that no detailed departmental inquiry was initiated and Investigating Officer has merely relied upon the statements of various witnesses recorded by him in absence of the plaintiff and no opportunity of cross-examining those persons have been provided to the plaintiff. According to Mr. Oza, when there is a clear cut breach of principles of natural justice as well as the provisions of service Rules relating to departmental inquiry of the appellant-defendant itself, consequential result would be to set-aside the impugned order of dismissal, which is non est in the eyes of law.

13.3 Mr. Oza, learned Senior Counsel has also submitted that the State Government has complete control over the Appellant and, therefore, it would be 'State' within the meaning of Article 12 of the Constitution of India and, therefore, Article 14 as well as Article 311 would be applicable in the present case. He has also submitted that there is no bar of the jurisdiction of the Civil Court in the matter. He has also submitted that when the appellant is a State instrumentality then the provisions of the Constitution would be applicable. He has submitted that in the present case, admittedly, there was no full-fledged inquiry initiated by the Appellant before dismissal of the plaintiff and, therefore, the dismissal itself is illegal in the eyes of law. Mr. Oza has submitted that the Appellate court has properly appreciated the facts and law applicable to the present case and has rightly passed the decree in favour of the plaintiff declaring the impugned order as illegal. He has also submitted that when the dismissal order itself is illegal then, even if, the plaintiff is not in service and has asked for alternative relief, does not affect the right of the plaintiff of reinstatement, especially when the order of dismissal itself is non est from the beginning and the ancillary relief would be re-

instatement of the plaintiff in service. He has also submitted that considering the peculiar facts of the present case, the reliance placed upon the Specific Relief Act would not be applicable. Mr. Oza has submitted that the various decisions, as relied upon by the learned advocate for the appellant- defendant, are not applicable to the present case, as the appellant herein is a State within the meaning of Article 12 of the Constitution of India, as no proper opportunity of being heard was afforded to the plaintiff and no full-fledged departmental inquiry was conducted prior to the impugned dismissal order passed by the appellate against the respondent Plaintiff. Mr. Oza has prayed to dismiss the present Appeal and to confirm the judgment of the first Appellate Court. He has relied upon the following decisions in support of his submissions:

1. In the case of Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others, 1981 1 SCC 722;

"8. We may point out that this very question as to when a corporation can be regarded as an 'authority' within the meaning of Art. 12 arose for consideration before this Court in R. D. Shetty v. The International Airport Authority of India & Ores. There, in a unanimous judgment of three Judges delivered by one of us (Bhagwati, J) this Court pointed out:

"So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this." It was in pursuance of the policy envisaged in this and sub-sequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporation was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through instrumentality or agency of corporations should equally be subject to the same limitations."

The Court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed:

"A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act 1956 or the Societies Registration Act 1860. Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is in corporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so what should be the nature of such control? Should the functions which the Corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government ? It is not possible to formulate an inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

The Court then proceeded to indicate the different tests, apart from ownership of the entire share capital:

" .... if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government..... It may therefore be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character .....But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action-Vide Sukhdev v. Bhagatram, 1975 3 SCR 619at 658. So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporation's ties to the State."

"There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller: "The Constitutional Law of the Security State" (10) Stanford Law Review 620 at 664)." "It may be noted that besides the so-called traditional functions, the modern state operates as multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram (supra) where the learned Judge said that "institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions."

The court however proceeded to point out with reference to the last functional test:

"..... the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by

Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non- governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. [Mathew, J. Sukhdev v. Bhagatram (supra) at p. 652]. But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference."

These observations of the court in the International Airport Authority's case (supra) have our full approval.

"9. The tests for determining as to when a corporation can be said to be a instrumentality or agency of Government may now be called out from the judgment in the International Airport Authority's case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows

(1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government."

(2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."

(3) "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected."

(4) "Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."

(5) "If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government." If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

"11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government Company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12."

2. In the case of Central Inland Water Transport Corporation Limited and Another, v. Brojo Nath Ganguly and Another, 1986 3 SCC 156;

"67. What is the position before us? Is it only one case decided on a concession and another based upon an assumption that a Government Company is "the State" under Article 12? That is the position in fact but not in substance. As we have seen, authorities constituted under, and corporations established by, statutes have been held to be instrumentalities and agencies of the Government in a long catena of decisions of this Court. The observations in several of these decisions, which have been emphasised by us in the passages extracted from the judgments in those cases, are general in their nature and take in their sweep all instrumentalities and agencies of the State, whatever be the form which such instrumentality or agency

may have assumed. Particularly relevant in this connection are the observations of Mathew, J., in Sukhdev Singh and others v. Bhagatram Sardar Singh Raghuvanshi and another, of Bhagwati, J., in the International Airport Authority's case and Ajay Hasia's case and of Chinnappa Reddy, J., in Uttar Pradesh Warehousing Corporations case. If there is an instrumentality or agency of the state which has assumed the garb of a Government company as defined in section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State. For the purposes of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State. The Corporation, which is the Appellant in these two Appeals before us, squarely falls within these observations and it also satisfies the various tests which have been laid down. Merely because it has so far not the monopoly of inland water transportation is not sufficient to divest it of its character of an instrumentality or agency of the State. It is nothing but the Government operating behind a corporate veil, carrying out a governmental activity and governmental functions of vital public importance. mere can thus be no doubt that the Corporation is "the State" within the meaning of Article 12 of the Constitution."

3. In the case of Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers Association and Another, 2002 2 SCC 167;

"1. The above appeals have been filed by the Mysore Paper Mills Ltd. (hereinafter referred to as the "Appellant-Company", against the judgment of a Full Bench of the High Court of Karnataka dated 12.8.98 in W.A. Nos.1242-1243, insofar as it was held therein that the appellant-company is "State" within the meaning of Article 12 of the Constitution of India, though, their appeals against the order of the Single Judge came to be allowed on the ground that impugned order of transfer against the 2nd respondent was not shown to be vitiated by malafides or by any extraneous considerations and that the respondents have no legal right to challenge the said order of transfer made on administrative grounds, when plea of alleged malafides and vindictiveness has not been substantiated."

"4. On a review and consideration of the case law on the subject, the Full Bench, in the judgment under challenge, noticed the various tests laid down by this Court and proceeding to consider the status of the appellant-company in the light of those tests and adverting as well to the memorandum of Association and Articles of Association of the appellant-company and the day-to-day administration of its affairs, held as hereunder:

"(a) That the appellant-company is a governmental company as per Section 617 of the Companies Act, 1956.

(b) The declared objects of the company viz., 1, 1A, 3, 4, 4A, 5, 5A and 5B establish that the company has been entrusted with an important function of public interest closely related to governmental functions and it enjoys monopoly status, which is state conferred.

(c) The functions entrusted to the appellant-company go to show that the government operates behind a corporate veil carrying out governmental functions of vital importance and therefore, there is no difficulty in identifying the appellantcompany to be 'State" within the meaning of Article 12 of the Constitution of India.

(d) The summarized balance sheets for the years 1993-94, 1994-95, and 1995-96 disclosed that more than 97% of the share capital has been contributed by the State of Karnataka and the financial institutions controlled and belonging to Government of India.

(e) The business of the company which has to be managed by the Board of Directors (Article 114 of the Articles of Association) shall have the Chairman of the Board and Managing Director (Article 119) and four Directors of whom one will be the Chairman will be nominated by the Government of Karnataka who shall not retire by rotation or be removed from office except under the orders of the Government of Karnataka (Article 94). The Directors to whom the Management is entrusted shall not be more than 12 or less than 9, inclusive of the Government nominees and nominees of the Financial Institutions noticed under Article 94A and not only such nominees of Financial Institutions hold office so long as moneys remain owed to those institutions or those institutions hold debentures in the company as a result of direct subscription or private placement, but the Board also has no powers to remove them during such period.

(f) xxxx xxx xxx

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(k) xxx xxx xxx"

"7. In Praga Tools Corporation vs C.A.Imanual & Ors., 1969 1 SCC 585, this court declared that the person or authority on whom the statutory duty is imposed need not be a public official or an official body and further held that a mandamus can be issued to a society to compel it to carry out the terms of the statute to which it owe

its Constitution as well as to companies or corporations to carry out their duties enjoined by the statutes, authorising their undertakings. In Andi Mukta S.S.M. V.S.S. J.M.S. Trust vs V.R. Rudani, 1989 2 SCC 691, this court held that the words "any person or authority" used in Article 12 of the Constitution of India are not to be confined to only statutory authorities and instrumentalities of the State and that they may cover any other person or body performing public duties and the form of the body concerned is not very much relevant. The nature of duty imposed on the body to be adjudged in the light of positive obligation owed by the person or authority to the affected party, would be determinative of the question of issue of a writ of mandamus to compel its performance. While dealing with the Institute of Constitutional and Parliamentary Studies, registered under the Societies Registration Act, 1860, this Court in Tekraj Vasandi @ K.L. Basandhi vs Union of India & Others, 1988 1 SCC 236, observed that there cannot be any strait-jacket formula for adjudging whether any person or authority answers the description of 'State' within the meaning of Article 12, and it would be necessary to look into the Constitution of the body, the purpose for which it has been constituted, the manner of its functioning including the mode of its funding and the broad features which have been found by this Court to be relevant for such purpose though it is not necessary that all those tests should be satisfied in every case to arrive at a conclusion either way."

"10. Instead of multiplying reference to several authorities of decided cases, it would be useful to advert to a latest decision of this Court rendered by a Constitution Bench in Steel Authority of India Ltd. & Others vs National Union Waterfront Workers & Others, 2001 7 SCC 1, wherein while dealing with a claim, whether all Central Government undertakings which fall within the meaning of "other authorities" in Article 12 of the Constitution of India are agents or instrumentalities of the State functioning under the "authority" of the Central Government to constitute such Government to be the "appropriate Government" for purposes of Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970 and Section 2(a) of the Industrial Disputes Act, 1947, this Court adverted to the relevant decisions and after an analytical consideration of the principles therein observed as follows:

"31. In interpreting the said phrase, support is sought to be drawn by the learned counsel for the contract labour from the cases laying down the principles as to under what circumstances a government company or undertaking will fall within the meaning of "State or other authorities" in Article 12 of the Constitution. We shall preface our discussion of those cases by indicating that for purposes of enforcement of fundamental rights guaranteed in Part III of the Constitution the

question whether a government company or undertaking is "State" within the meaning of Article 12 is germane. It is important to notice that in these cases the pertinent question is appropriateness of the Government which is the appropriate Government within the meaning of the CLRA Act; whether the Central or the State Government is the appropriate Government in regard to the industry carried on by the Central/State Government company or any undertaking and not whether such Central/State Government company or undertaking comes within the meaning of Article 12. The word "State" is defined in Article 12 which is quoted in the footnote.

32. In Sukhdev Singh vs Bhagatram Sardar Singh Raghuvanshi this Court, in the context whether service regulations framed by statutory corporations have the force of law, by majority, held that the statutory corporations like ONGC, IFFCO, LIC established under different statutes fell under "other authorities" and were, therefore, "State" within the meaning of that term in Article 12 of the Constitution. The Court took into consideration the following factors, (a) they were owned, managed and could also be dissolved by the Central Government; (b) they were completely under the control of the Central Government; and (c) they were performing public or statutory duties for the benefit of the public and not for private profit; and concluded that they were in effect acting as the agencies of the Central Government and the service regulations made by them had the force of law, which would be enforced by the Court by declaring that the dismissal of an employee of the corporation in violation of the regulations, was void.

33. In Ramana Dayaram Shetty vs International Airport of India a three-Judge Bench of this Court laid down that corporations created by the Government for setting up and management of public enterprises and carrying out public functions, act as instrumentalities of the Government; they would be subject to the same limitations in the field of constitutional and administrative laws as the Government itself, though in the eye of the law they would be distinct and independent legal entities. There, this Court was enforcing the mandate of Article 14 of the Constitution against the respondent a Central Government corporation.

34. Managing Director, U.P. Warehousing Corpn. vs Vijay Narayan Vajpayee dealt with a case of dismissal of the respondent employee of the appellant Corporation in violation of the principles of natural justice. There also the Court held the Corporation to be an instrumentality of the State and extended protection of Articles 14 and 16 of the Constitution to the employee taking the view that when the Government is bound to observe the equality clause in the matter of employment the corporations set up and owned by the Government are equally bound by the same discipline.

35. In Ajay Hasia vs Khalid Mujib Sehravardi the question decided by a Constitution Bench of this Court was: whether Jammu and Kashmir Regional Engineering College, Srinagar, registered as a society under the Jammu and Kashmir Registration of Societies Act, 1898, was "State" within the meaning of Article 12 of the Constitution so as to be amenable to writ jurisdiction of the High Court. Having examined the memorandum of association and the Rules of the Society, the Court decided that the control of the State and the Central Government was deep and pervasive and the Society was a mere projection of the State and the Central Government and it was, therefore, an instrumentality or agency of the State and the Central Government and as such an authority-State within the meaning of Article 12.

36. The principle laid down in the aforementioned cases that if the Government acting through its officers was subject to certain constitutional limitations, a fortiori the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations, was approved by the Constitution Bench and it was pointed out that otherwise it would lead to considerable erosion of the efficiency of the fundamental rights, for in that event the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its function through the instrumentality or agency of a corporation while retaining control over it. That principle has been consistently followed and reiterated in all subsequent cases see Delhi Transport Corpn. vs D.T.C.Mazdoor Congress, Som Prakash Rekhi vs Union of India, Manmohan Singh Jaitla vs Commr., Union Territory of Chandigarh, P.K. Ramachandra Iyer vs Union of India, A.L. Kalra vs Project and Equipment Corpn. of India Ltd., Central Inland Water Transport Corpn. Ltd. vs Brojo Nath Ganguly, C.V. Raman vs Bank of India, Lucknow Development Authority vs M.K. Gupta, Star Enterprises vs City and Industrial Development Corpn. of Maharashtra Ltd., LIC of India vs Consumer Education & Research Centre and G.B. Mahajan vs Jalgaon Municipal Council. We do not propose to burden this judgment by adding to the list and referring to each case separately.

37. We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law constitutional or administrative law as the Government itself, does not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law."

"11. A careful consideration of the principles of law noticed supra and the factual details not only found illustrated from the memorandum as well as Articles of Association of the appellant but enumerated from the day-to-day running of the business and administration of the company leave no room for any doubt as to the identity of the appellant-company being "other authority" and consequently "the State" within the meaning of Article 12 of the Constitution of India. The said definition has a specific purpose and that is part III of the Constitution, and not for making it a Government or department of the Government itself. This is the inevitable consequence of the "other authorities" being entities with independent status distinct from the state and this fact alone does not militate against such entities or institutions being agencies or instrumentalities to come under the net of Article 12 of the Constitution. The concept of instrumentality or agency of the Government is not to be confined to entities created under or which owes its origin toany particular statute or order but would really depend upon a combination of one or more of relevant factors, depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be, by piercing the corporate veil of the entity concerned."

"12. The indisputable fact that the appellant-company is a Government company as envisaged in Section 617 attracting Section 619 of the Companies Act, that more than 97% of the share capital has been contributed by the State Government and the financial institutions controlled and belonging to the Government of India on the security and undertaking of the State Government, that the amendments introduced to the Memorandum of Association in the year 1994 introducing Articles 5A and 5B, entrusts the appellant-company with important public duties obligating to undertake, permit, sponsor rural development and for social and economic welfare of the people in rural areas by undertaking programmes to assist and promote activities for the growth of national economy which are akin and related to the public duties of the State, that out of 12 directors 5 are Government and departmental persons, besides other elected directors also are to be with the concurrence and nomination of the Government and the various other form of supervision and control, as enumerated supra, will go to show that the State Government has deep and pervasive control of the appellant company and its day-to-day administration, and consequently confirm the position that the appellant-company is nothing but an instrumentality and agency of the State Government and the physical form of company is merely a cloak or cover for the Government. Despite best and serious efforts made on behalf of the appellant, the decision under challenge has not been shown to suffer any infirmity whatsoever to call for interference in our hands."

4. Judgment of the Division Bench of this Court dated 24.7.2020 passed in LPA No. 1596 of 2019 in SCA No. 4439 of 2017 and allied matters in the case of State of Gujarat v. Chetan Jayantilal Rajgor;

"5.8 It is the foundation of the order which really matters. The Supreme Court in Anoop Jaiswal (supra) stated that if from the record and the attendant circumstances of the present case it becomes clear that the real foundation for the order of discharge of the appellant-probationer was the alleged act of misconduct, the impugned order would amount to termination of service by way of punishment and in absence of any enquiry held in accordance with Article 311(2), it was liable to be struck down. The Supreme Court thereafter directed reinstatement of the appellant of the said case in service with the same rank of seniority he was entitled to before the impugned order passed as if it had not been passed at all.

6.1 An attempt was made in vain by learned advocate for the respondents that there was compliance of natural justice as the notice was issued to the petitioner. A mere notice would not suffice. No inquiry was held, no charge was framed against the petitioner. Without issuing the charge and without putting the petitioner to knowledge of the allegation which he was to precisely answer, the principles of natural justice could not be said to be followed when the order was founded on misconduct. As held by the Division Bench of this Court in the judgment above, it necessitated a full scale inquiry against the petitioner after issuing show-cause notice and by framing appropriate charge, conducting it in accordance with the natural justice.

5. Khem Chand v. Union of India and Others, 1958 AIR(SC) 300;

"20. .....The above passage quite clearly explains that the point on which their Lordships of the Judicial Committee agreed with the majority of the Federal Court is that a further opportunity is to be given to the government servant after the charges have been established against him and a, particular punishment is proposed to be meted out to him.....This clearly proceeds on the basis that the right to defend himself in the enquiry and the right to make representation against the proposed punishment are all parts of his " statutory right " and are implicit in the reasonable opportunity provided by the statute itself for the protection of the government servant.

6. State of Mysore and others v. Shivabasappa Shivappa Makapur, 1963 AIR(SC) 375, following observation is made in Para-6;

"6. In respect of taking the evidence in an inquiry before such Tribunal, the person against whom a charge is made should know the evidence which is given against

him, so that he might be in a position to given his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examined him."

7. Kuldeep SIngh v. Commissioner of Police and Others, 1999 2 SCC 10;

"32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness.

35. Having regard to the law as set out above, and also having regard to the fact that the factors set out in Rule 16(3) of the Delhi Police (F&A) Rules, 1980, did not exist with the result that Rule 16(3) itself could not be invoked, we are of the opinion that the Enquiry Officer was not right in bringing on record the so-called previous statement of witnesses Radhey Shyam and Rajpal Singh.

36. It will be noticed that there were three complainants but only two, namely, Radhey Shyam and Rajpal Singh were proposed to be examined. Why was not the third complainant, Shiv Kumar, proposed to be examined? The reason becomes obvious from the fact that when he was examined as a Defence witness, he fully supported the appellant by stating that no payment was made by Smt. Meena Mishra on that date. But he was held by the Enquiry Officer to be an impostor on the ground that he had not proved himself to be actual Shiv Kumar....."

37. The reasons why he has been held to be an impostor or a false person have not been indicated. The finding in this regard is wholly arbitrary and perverse.

38. The findings recorded by the Enquiry Officer, have also been upheld by the Deputy Commissioner of Police, South District, New Delhi who had passed the

order on 3rd of May, 1991 by which the appellant was dismissed from service. The Addl. Commissioner of Police, before whom the appeal was filed by the appellant, also agreed with the findings recorded by the Enquiry Officer as also the Deputy Commissioner and dismissed the appeal on 22.07.1991.

40. To sum up, the charge against the appellant consisted of two components, namely :

(a) On 22.2.90 Smt. Meena Mishra paid Rs. 1000/- to the appellant for being paid to the three labourers.

(b) Appellant paid Rs. 800/- to labourers and kept Rs. 200/- with himself.

41. Smt. Meena Mishra, appearing as a witness for the Department, denied having made any payment to the appellant on that day. The labourers to whom the payment is said to have been made have not been produced at the domestic enquiry. Their so-called previous statement could not have been brought on record under Rule 16(3). As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Enquiry Officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.

42. The Enquiry Officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "Reasonable Opportunity", contemplated by Article 311(2) of the Constitution. The "Bias" in favour of the Department had so badly affected the Enquiry Officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the Enquiry Officer to prove the charge framed against the appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up".

8. Unreported judgment of the Hon'ble Apex Court dated 12.3.2021 passed in Civil Appeal No. 805/2021 in the case of Mallanaguoda and Ors v. Ninganagouda and Ors;

"10. The First Appellate Court is the final Court on facts. It has been repeatedly held by this Court that the judgment of the First Appellate Court should not be

interfered with by the High Court in exercise of its jurisdiction under Section 100 CPC, unless there is a substantial question of law."

9. The decision of the Apex Court dated 13.3.2019 passed in Civil Appeal No. 6567 of 2014 in the case of Gurnam Singh (D) By Lrs & Ors. v. Lehna Singh (D) by LRs.

"13.1 .....As per the law laid down by this Court in a catena of decisions, the jurisdiction of High Court to entertain second appeal under Section 100 CPC after the 1976 Amendment, is confined only when the second appeal involves a substantial question of law. The existence of 'a substantial question of law' is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this Court in the case of Kondiba Dagadu Kadam (Supra), in a second appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being:

(i) Contrary to the mandatory provisions of the applicable law;

OR

(ii) Contrary to the law as pronounced by the Apex Court;

OR

(iii) Based on inadmissible evidence or no evidence.

It is further observed by this Court in the aforesaid decision that if First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. It is further observed that the Trial Court could have decided differently is not a question of law justifying interference in second appeal.

14. When a substantial question of law can be said to have arisen, has been dealt with and considered by this Court in the case of Ishwar Dass Jain (Supra). In the aforesaid decision, this Court has specifically observed and held:

"Under Section 100 CPC, after the 1976 amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered, would have led to an opposite conclusion. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate court

by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. In either of the above situations, a substantial question of law can arise."

10. Union of India and others v. Ram Bahadur Yadav, 2022 1 SCC 389;

"14. It is a settled legal position that when Rules contemplate method and manner to adopt special procedure, it is mandatory on the part of the authorities to exercise such power by adhering to the Rule strictly.....By merely repeating the language of the Rule in the order of dismissal, will not make the order valid one, unless valid and sufficient reasons are recorded to dispense with the inquiry. When the Rule mandates recording of reasons, the very order should disclose the reasons for dispensing with the inquiry."

"17. In the judgment in the case of Tarsem Singh v. State of Punjab & Others, 2006 13 SCC 581, this Court has categorically held that when the Authority is of the opinion that it is not reasonably practicable to hold inquiry, such finding shall be recorded on the subjective satisfaction by the authority, and same must be based on the objective criteria. In the aforesaid case, it is further held that reasons for dispensing with the inquiry must be supported by material.

18. With regard to plea of the appellants for grant of back wages, in the case of Tarsem Singh (supra), this Court has held that payment of back-wages would depend on result of the inquiry.

19. Opposing the award of back wages, learned Senior Counsel for the appellants has placed reliance on the judgment of this Court in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, 2013 10 SCC 324. Grant of back wages depends on facts and circumstances of each case. In the aforesaid case, while dealing with grant of back-wages, this Court has held that in the case of wrongful termination of service, reinstatement with continuity of service and back-wages is normal rule and the adjudicating authority to take into consideration the length of service of the employee, nature of misconduct, financial condition of the employer and similar other factors.

20. On the other hand, in the case of M/s. Hindustan Tin Works Pvt. Limited v. The Employees of M/s. Hindustan Tin Works Private Limited & others, 1979 2 SCC 80, this Court has held that reinstatement with back-wages, fully or partially, is a matter of discretion of the Tribunal."

[14] In rejoinder, Mr. Devnani learned advocate for the appellant-defendant has submitted that there is an Appeal provisions contained in the Service Rules, placed at

Exh-147 in the trial Court and the plaintiff-respondent has not taken recourse to that alternative remedy available to him under the Service Rules, the Suit itself was premature. He has submitted that the judgment and decree of the trial Court dismissing the Suit of the plaintiff is proper one, whereas, the judgment of the first Appellate Court is clearly contrary to the facts and law and, therefore, the impugned judgment of the Appellate Court needs to be quashed and set-aside. He has prayed to allow the present Appeal accordingly. Mr. Devnani has submitted that the reliance placed on various decisions by the learned Senior Counsel for the respondent are not applicable to the facts of the present case.

[15] Having considered the submissions made by both the sides coupled with the judgmenents of the Courts below and the evidence produced before the trial Court, it appears that there is no dispute to the fact that the plaintiff was serving with the defendant as a Project Supervisor. The preliminary inquiry came to be initiated against him and charges against the plaintiff were to the effect that 14 persons who were the beneficiaries of the Government Scheme, monetary incentives were given to them. These 14 Tribal persons were assigned the work of collection of Shelarc. Out of them, 7 persons were paid only Rs.20/- and the rest of amount was misappropriated by the plaintiff. The other charge is that 4 covers of such incentives, which were the amount to be paid to these persons, were with-held by the plaintiff with him and he deposited the same after the complaint. The 3rd charge is that in the season wherein Timru leaves are collected, the plaintiff had engaged his own brothers on temporary basis for a tenure of 29 days. The 4th charge is that he was irregular in handing over the account of impressed cash given to him from time to time. It appears from the record that the defendants have examined only one witness namely Mr. Vadilal Harilal Joshi at Exh-89. It appears from his evidence that he has held inquiry against the plaintiff regarding the charges levelled against him. He has stated that on the basis of the complaint, he has initiated preliminary inquiry and the statement of various persons were recorded by the Assistant Project Manager in his presence. He has stated that after recording such statement and preliminary inquiry, he has sent report to the Managing Director as per Exh-105. During his Chief-examination, these statements of various witnesses during the preliminary inquiry came to be exhibited from 90 to 102. He has also stated that the Managing Director Mr. Vaishnav has issued showcause notice to the plaintiff, a copy of which is produced at Exh-106 and 107. He has also stated that on service of notice, the plaintiff as per Exh-108, has sought for adjournment which was granted to him. He has stated that thereafter, the plaintiff did not filed any reply and sought for adjournment. He has stated that thereafter, as per Exh-112, the plaintiff sent his explanation. He has produced various other documents and has stated that ultimately the Managing Director has issued Notice of dismissal at Exh-123, which was served upon the plaintiff on 14.3.1986. He has stated that from

that date, the plaintiff is not in service with the Corporation. He has also stated that the plaintiff had earlier filed Suit in the Godhra Court and sought for ex-parte injunction, which was not granted and thereafter the plaintiff has filed the present Suit.

15.1 During his evidence, he has admitted that there are Service Rules in relation to the staff of the Corporation. He has admitted that he has not received any order from the Corporation to initiated preliminary inquiry against the plaintiff. He has admitted that the final inquiry is always made after preliminary inquiry. He has stated that during the course of preliminary inquiry, the plaintiff was called but he did not remained present. He has stated that he had completed the preliminary inquiry within 3 days. He has admitted that in his report he has not mentioned that the plaintiff has denied to accept the letter of show-cause notice. He has admitted that the entire preliminary inquiry was conducted in absence of the plaintiff and the statement of various persons were recorded without any oath. He has admitted that when has recorded the statements of 13 persons, the plaintiff was no present and he does not remember as to whether any opportunity of cross-examining them was afforded to the plaintiff or not. He has stated that the complaint, on the basis of which inquiry was initiated, was not shown to the plaintiff nor statements of such other persons were shown to the plaintiff. He has also admitted that the statement of 13 persons, which he has recorded, were not shown to the plaintiff. He has also stated that no official record was kept while recording the statement of 13 persons. He has admitted that report at Exh-103 is in his handwriting and in that report it is mentioned that the plaintiff has told him that the plaintiff has given detailed report to the Managing Director on 1.10.1983. He has stated that this detailed reply was taken in absence of Kapasi who was Managing Director at the relevant point of time.

15.2 He has admitted the fact that whenever any departmental inquiry is conducted against employee by the Corporation, the record is always maintained and opportunity of being heard and defence is being given to the said employee. He has stated that he has submitted report of preliminary inquiry on 10.10.1983 and at that time, no opportunity of cross-examination of witnesses was given to the plaintiff. He has shown his ignorance as to whether the record sought for by the plaintiff was provided to him or not. He has also shown his ignorance as to whether final departmental inquiry was initiated against the plaintiff after preliminary inquiry or not.

[16] Thus, it appears from the evidence of the Inquiry Officer, who has conducted the preliminary inquiry that the plaintiff was not afforded any opportunity of cross-examining the persons whose statements have been recorded by the Inquiry Officer, that too, in absence of the plaintiff. It also reveals that after the preliminary inquiry,

there is no final inquiry conducted by the defendant. The defendant side has not produced any iota of evidence to suggest that there was a full-fledged departmental inquiry conducted against the plaintiff and before passing the impugned order of dismissal, proper opportunity of being heard was afforded to him.

[17] Now, the main grievance of the defendant Corporation is that it is not a "State" within the meaning of Article 12 of the Constitution of India. It is admitted fact that the Corporation has vide Exh-132 in the trial Court, prayed that it is "State Undertaking" and the matter is liable to be decided by the Gujarat Civil Services Tribunal. This stand of the defendant itself suggest that it is a government undertaking and not merely Corporation. At this juncture, it is pertinent to note that the Service Rules pertaining to the appellant defendant is produced before the trial Court, is at Exh-147. The title of the said Rules is as under:

"GUJARAT STATE FOREST DEVELOPMENT CORPORATION LIMITED

(A GOVERNMENT OF GUJARAT UNDERTAKING)

SERVICE RULES - 1976 AS AMENDED FROM TIME TO TIME.

PREAMBLE:

WHEREAS it is necessary to define and lay down terms and conditions of appointment and service of employees in the administration, executive, legal, commercial, financial, accounts, audit, technical & Other Departments of the Gujarat State Forest Development Corporation Limited and to provide for their functions, duties, conduct, discipline and remuneration, the Board of Directors of the Corporation do hereby frame and adopt the following rule:

CHAPTER - I GENERAL

SHORT TITLE:

These rules shall be called "Gujarat State Forest Development Corporation Limited Service Rules, 1976".

DEFINITION:

In these reules, unless there is anything repugnanat in the subject or context

(a) xxx xxx xxx

to

(r) xxx xxx xxx

(s) All other words, expressions not defined/ included anywhere in the Service Rules shall have the same meaning respectively assigned to them in the 'Bombay Civil Service Rules.'

17.1 The relevant provisons regarding the penalty, subsistence allowances and Appellate Authority has been made in Rules 101, 102, 104 and 105, which read as under:

" 101: PENALTIES:

The appointing authority or such other authority empowered in this behalf may, without prejudice to the provision of any other rules, impose following penalties on an employee who commits a wilful breach of any of these rules or any of his duties or who displays dishonesty, negligence, inefficiency, insubordination, indolence or rudeness, or who, knowingly, wilfully or negligently, causes any loss or damage, whether pecuniary or otherwise to the Corporation or to any of its properties, or who, knowingly, wilfully or negligently, does anything detrimental to the interest or prestige of the Corporation or in conflict with its instructions of who commits a breach of discipline or is guilty of disobedience of any other act of misconduct or misbehaviour or of placing personal consideration of any nature above the interest of the Corporation.

(a) Fine

(b) Withholding or postponement of increments or promotion including stoppage at an efficiency bar if any.

(c) Permanent stoppage of increment.

(d) Reduction to a lower post or lower stage on the same scale.

(e) Discharge from service.

(f) Dismissal from service.

10.2 No penalty shall be imposed on any employees. unless the appointing authority or such other authority empowered in this behalf is satisfied that a fair and proper enquiry was amde and the charges leading to the penalty were proved.

104. APPEALS:

An employee shall have a right of appeal against an order which injuriously affects his interest.

105. APPELLATE AUTHORITY:

The appeal shall lies to the next immediate superior of the authority that issued the impugned order. A final appeal may lie to the next immediate superior of the first appellate authority. "

[18] At this juncture, the Clauses of Memorandum of Association need to be referred to:

"1. To undertake proper and scientific exploitation of the forest products in the State of Gujarat for purpose of improving qualitative and quantitative yield of forest products and for development of industries based on forest products.

2. To carry on the business of collecting, converting, transporting, processing, standardising, grading, sorting, distributing and marketing of various forrest products both raw and finished goods, and to explore new uses and markets for the forest products whether exploited by the Company or otherwise.

3. To carry on business of planting, producing, buying, selling and or in anyway dealing in all forest products, such as flowers, fruits, seeds, leaves, flosses, fibres, wood, gums, oils, resings, katha and cutch, tannins, dyes, lac, timber, grass, bamboos, medicinal and other plants, spices, beverages, hides, skins and feathers and other produce.

4. To produce collect, process, export and import all fodder including grass, fibres, leaves of all varieties or any kind of products or bye-products therefrom.

5. To plant, grow, cultivate, produce, raise, maintain, conserve, protect preserve and develop plantations of all kinds and varieties of all plants, trees and crops and natural products of every kind and other agricultural crops and to buy, sell, export, import, process, distribute or otherwise deal in all kinds of forest plants, forest produce, tree crops, natural products and agricultural and silvicultural crops.

6. To develop land for raising plantations of important species like teak, mahuda, timbru, kadaya, kharek, eucalyptus, tropical pines, bursera, coco, bamboos, khair, bor and other species for the purpose of development of industries based on the said products.

7. To produce, collect, process, export and import all and improved varieties of the forest seeds on all kinds.

8. To undertaken, promote, participate or cause to be undertaken or promoted research in forestry techniques, silvicultural and biological research and to conduct, encourage or promote studies investigations, research of Forest species in marketing, processing and utilisation of Forest produce necessary for the development of forests."

[19] As an incidental and ancillary object, certain other objections are also enlisted in Part-B out of which No.18 and 42 are relevant, which run as under:

"18. To undertake, transact and execute any and all works and projects of the Government or any other authority related to forests or forestry and all kinds of agency, business and trusts and to accept as grant, subsidy or loan, any amount of money for execution of such works."

"42. To recruit directly on pay scales and conditions as approved by the Corporation or to take on loan or on transfer, officers and staff from Government and statutory bodies or companies on such terms and conditions as mutually agreed upon and to arrange for their training to carry out the activities of the Corporation."

[20] It also appears from the Memorandum of Association that the initial subscribers of the shares of the Company are all the Government Servants. The mode of recruitment on the basis of even on tranfer from teh Government suggests that the Appellant-respondent is a Government Undertaking otherwise no private Corporation, which is registered under the Companies Act, which would get the Government Officer transfer from the Government Department, is one of the pointer to suggest that the Appellant- Corporation is instrumentality of the Government. This Company has been incorporated by the Government itself. Considering all these facts coupled with the own admission of the Appellant that it is a government undertaking, and the earlier averment that the matter requires to be considered by the Gujarat Civil Services Tribunal, clearly suggest that the Appellant Company is a 'State' within the meaning of Article 12 of the Constitution of India. Therefore, the person working in the Corporation would be entitled to the protection envisaged under Article 311 of the Constitution of India regarding his service.

[21] At this juncture, it is also pertinent to note that, as referred to hereinabove, there is appeal provision made in the Rules of the appellant-defendant. However, there is no provision worth a name, produced before the Court, to point as to who is the Appellate Authority against the order of the Managing Director. As per the Service Rules produced before the trial Court, the Managing Director is the highest Officer of the Corporation in whom the entire administrative power has been vested. Now, admittedly, in the present case, the order of removal from the services of the plaintiff-respondent has been passed by the Managing Director. In absence of any provision regarding filing of the Appeal before the Appellate Forum, which is not specified in the Rules itself, the aggrieved servant of the Appellate Corporation is entitled to approach the Civil Court against the Corporation for remedy.

[22] Considering all these facts and circumstanced of the case, this Court is of the considered view that the appellant defendant is 'State' within the meaning of Article 12 of the Constitution of India and accordingly the legal issues framed at Serial No.1 is hereby answered in affirmative.

[23] The appellant has for the first time raised the question of applicability of the provisions of the Specific Relief Act to the facts of the case. According to the defendant, at the time of filing of the Suit, the dismissal order was already served to the plaintiff and yet, he has made averments alleging that he is in service for staying dismissal order. According to the appellant defendant, therefore, the plaintiff has not come with clean hands and the injunction being an equitable relief under the provisions of the Specific Relief Act, no relief ought to have been granted by the first Appellate Court. At this juncture, it is pertinent to note that the plaintiff has, alternatively, sought for relief of reinstatement on the ground that if it is proved that dismissal order was served upon him, then in that case also dismissal order being passed without any full-fledged inquiry and without affording opportunity of heard to him as well as without providing sufficient documentary evidence to him, the order itself is illegal ab-initio.

[24] Now, it is admitted fact that the plaintiff has filed the Suit for declaration and injunction. Therefore, the provision of the Specific Relief Act, 1963 would be applicable. The provision of Section 38, 39 and 41 would be relevant as it provide for perpetual injunction, mandatory injunction and when injunction can be refused respectively. Section 38, 39 and 41 read as under:

Section38: Perpetual injunction when granted.

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:--

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Section 39.Mandatory injunctions:

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Section 41: Injunction when refused. An injunction cannot be granted--

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

[25] Considering the scope of Section 38, it clearly reveals that sub-section (1) of Section 38 deals with the cases of "breach of obligation". Now, the term "obligation" has been defined in Clause (a) of Section 2 as includes every duty enforceable by law. As the definition includes any duty enforceable by lay, it will include (i) obligation arising out of law of torts as well as of Contract; (ii) obligation arising out of trust; and (iii) obligation arising under a statute or any other legal duty. The right under Section 38 is not a special right but pre-existing right. Permanent injunction is granted after final determination of the parties. After the establishment of his legal right and the fact of its violation, the plaintiff is in general entitled as a course to a perpetual injunction to prevent the recurrence of the wrong. It is pertinent to note that Section 38 pertains to granting of injunction whereas Section 41 deals with the matter as to refusal thereof. Former defines the circumstances under which the perpetual injunction may be granted and later enumerates cases where injunction must not be granted.

[26] It appears that the appellant - defendant is relying upon the provisions of Section 41(e) and 41(h) on the basis that there was a service contract between the parties and the plaintiff has also efficacious remedy of appeal available as per Service Rules. However, considering the facts of this case, it clearly reveals that there is no alternative remedy available to the plaintiff under the Service Rules as no appellate forum is provided for filing appeal against order of the Managing Director. At the same time, as per the evidence on record, it is clearly found that no full-fledged departmental inquiry was initiated against the plaintiff and only on the basis of the report of the preliminary inquiry, the dismissal order was passed. Not only that but, it also reveals from the record that necessary documents were not provided to the plaintiff and even the Statements of 13 persons whom the inquiry officer has examined in preliminary inquiry, were not given to the plaintiff. Even in Service Rules placed on record in Clause-102, it is necessary that competent authority has to specify that a fair and proper inquiry was made.

[27] Thus, from the facts of the present case, it clearly reveals that there was no fair inquiry conducted against the plaintiff and the impugned disposal order was passed. Now, it is obligatory on the part of the appellant-defendant to hold fair and proper

inquiry against the plaintiff and thereafter necessary order of dismissal or removal could be passed. In absence of such fair inquiry, dismissal order itself is illegal ab-initio. Therefore, since legal right of the plaintiff is infringed due to the action of the respondent, and looking to the peculiar facts of the present case, the plaintiff is entitled to get declaration injunction as sought for in the suit. Therefore, this Court has decided legal Question No.2 in affirmative.

[28] Now, it is pertinent to note that by the impugned judgment and decree, the first Appellate Court has quashed and set-aside the dismissal order and held that the plaintiff must be treated as having continuous in service, from the date of the order of the dismissal and it has also directed the defendant Corporation to pay all the arrears and pay other allowances. These, observations and order of the first Appellate Court, is not proper. It is an admitted fact that the plaintiff has not worked in the Corporation from the date of his dismissal till he has been reinstated. Further, it also appears from the record that the plaintiff has alternatively sought that if it is believed that his service has come to end then by declaring the action of the defendant as illegal, he may be reinstated in the service with all consequential benefits. Thus, by necessary implications, it will be admitted fact that the plaintiff was already not in service at the time of filing of the Suit. Therefore, though the action of the defendant dismissing the plaintiff without any proper departmental inquiry, is declared as illegal, that itself does not give the plaintiff right to get all the financial benefits pertaining to his service from the date of his dismissal till his reinstatement. But the plaintiff can be granted back wages upto certain percentage, as he has not worked in the Corporation. Of course, he was already dismissed from the service. That at the same time, it is pertinent to note that, it is not a case of the plaintiff that after his dismissal from the service till his reinstatement, he was not gainfully employed or has not earned anything. Therefore, considering the fact that the relief, which is sought for by the plaintiff, is based upon equity, the relief regarding payment of salary needs to be moulded accordingly. Therefore, in the considered opinion of this Court, the impugned order of payment of arrears from the date of dismissal is not sustainable in the eyes of law. At the most, the defendant appellant may be directed to pay 25% of the amount payable to the plaintiff during the period from dismissal of his service till his reinstatement and then after his reinstatement, he may be entitled to get the salary, which may be available to him and the period of absence due to dismissal may be treated as notional for the purpose of fixation of salary and for ancillary benefits.

[29] In view of the above discussion, I pass the following final order in the interest of justice:

-:ORDER:-

The present Second Appeal is partly allowed. While confirming the decision as to quashment of the order of dismissal of the plaintiff, the impugned judgment and decree dated 23.3.2000 passed by the learned 2nd Extra Assistant Judge of Panchmahal District at Godhra, in Regular Civil Appeal No. 51/94 is hereby partly modified to the effect that the appellant defendant shall pay 25% of the amount of arrears of salary, etc., to the plaintiff from the date of his dismissal till the date of his reinstatement. The appellant-defendant is also directed to consider the period from the date of dismissal till the reinstatement, as notional period for the purpose of financial benefits and ancillary benefits available to the plaintiff, as per Service Rules.

Considering the facts and circumstances of the case, the parties are directed to bear their respective costs of this Appeal.

Decree to be drawn accordingly in the present Appeal.

Alongwith copy of the judgment and decree, R&P be sent back to the trial Court.