

**AFR**

**Reserved on 21.05.2018**

**Delivered on 20.11.2018**

**Court No. - 34**

**(1) Case :-** WRIT - A No. - 54840 of 2013

**Petitioner :-** Rajesh Bhardwaj

**Respondent :-** Union of India and others

**Counsel for Petitioner :-** Pushkar Mehrotra, N.K. Singh, Sameer Sharma

**Counsel for Respondent :-** A.S.G.I., Pranjal Mehrotra, Siddhartha, Yashovardhan Swarup

**(2) Case :-** WRIT - A No. - 54841 of 2013

**Petitioner :-** Subhash Verma

**Respondent :-** Union of India and others

**Counsel for Petitioner :-** Pushkar Mehrotra, N.K. Singh, Sameer Sharma

**Counsel for Respondent :-** A.S.G.I., Pranjal Mehrotra, Siddhartha, Yashovardhan Swarup

**Hon'ble Sudhir Agarwal, J.**

**Hon'ble Ifaqat Ali Khan, J.**

*(Delivered by Hon'ble Sudhir Agarwal, J.)*

1. Heard Sri Sameer Sharma, learned counsel for petitioners and Sri Pranjal Mehrotra, learned counsel for respondents in both these writ petition.

2. Both these writ petitions involve similar questions of law involving similar facts, hence have been heard together and are being decided by this common judgment.

3. **Writ Petition No. 54840 of 2013** (hereinafter referred to as “First Petition”) has been filed by sole petitioner, Rajesh Bhardwaj, under Article 226 of Constitution of India assailing termination order dated 01.08.2013 (Annexure-7 to the writ petition) passed by Managing Director, Central U.P. Gas Limited (hereinafter referred to as “CUPGL”) terminating petitioner from service giving one month salary in lieu of notice period by referring to terms of letter of

appointment dated 09.04.2009.

4. The facts in brief are that CUPGL is a Company registered under Companies Act, 1956 (hereinafter referred to as “Act, 1956”) incorporated as a joint venture of Gas Authority of India Limited (hereinafter referred to as “GAIL”) and Bharat Petroleum Corporation Limited (hereinafter referred to as “BPCL”). Petitioner was appointed as Manager (C&P) on 30.03.2010 in CUPGL initially on probation of one year. On 24.05.2013, he was placed under suspension. A charge-sheet dated 24.05.2013 was also served upon him leveling three charges as under:

*“A. Providing forged Rail tickets and claiming travel expenses-*

*It has come to the notice of the management that on the several occasions you have submitted forged Rail tickets for your official tours and claimed the expenses from the company. Please explain.*

*B. Vehicle Loan – Non Hypothecation*

*After taking vehicle loan from the Company, you have now refused to provide any vehicle relates documents to the Company. This in itself a very serious offence, if you adopt to such acts of indiscipline, then the office decorum and rules would be flouted at every step. After providing you adequate notice, HR stopped your salary payment for April 2013.*

*C. Financial irregularities attached as Annexure- A*

*Please note the charges on your part are quite serious and grave in nature and tantamount to serious acts of gross misconduct as follows:*

- *Claiming reimbursement against forged Railway tickets.*
- *Gross violation in adopting financial & C&P guidelines.*
- *Misguiding superiors on tender files.*
- *Authorizing payment to contractors without verification.*
- *Providing misleading information to management MD &*

DC.

- *Financial irregularities*

*Being a Manager C&P in the Company, your aforesaid acts are of serious concern and casts a doubt to your integrity.”*

5. Petitioner submitted reply dated 19.06.2013 denying the charges leveled against him. Through an E-mail dated 20.06.2013 he was required to be present at Kanpur Office between 24.06.2013 to 28.06.2013. He reached office on 24.06.2013 but was not called for in discussion. On 25.06.2013 again petitioner received an E-mail requiring him to appear for discussion in Kanpur Office on 25.06.2013. On 25.06.2013 he was asked to come in Conference Room where he found that a private company namely K.P.M.G., a Chartered Accountant Firm, was appointed as Inquiry Agency and three persons were sitting in Conference Room not known to petitioner. The Representative of Inquiry Agency put certain queries to petitioner and thereafter he was asked to again appear on 28.06.2013. Petitioner appeared on 28.06.2013 but did not find any Member of Inquiry Committee and no proceedings, therefore, took place on that date. Petitioner then sent a letter dated 10.07.2013 asking respondent-2 to convey him conclusions arrived at by Inquiry Committee or by any higher Officer. Reminders were also sent on 18.07.2013 and 29.07.2013. Letter dated 29.07.2013 remained unserved with the endorsement “refused to receive”. Thereafter, petitioner was served with the letter dated 01.08.2013 terminating him from services.

6. The termination has been challenged on the ground that no proper inquiry was conducted; termination is punitive and there is utter violation of principles of natural justice; report of Inquiry Committee was never served upon him; hence termination is penal in nature and in violation of principles of natural justice, and, thus, liable to be set aside. CUPGL is a Company in which Central Government has funded more than 50 per cent. It is ‘State’ within the meaning of

Article 12 of Constitution and hence petition before this Court under Article 226 is maintainable and termination order is assailable in writ jurisdiction.

7. On behalf of respondents-2 and 3 a counter affidavit has been filed admitting that CUPGL is a joint venture Company registered under Act, 1956 as a Public Limited Company by shares. 25 per cent shares, each, are held by BPCL and GAIL. Remaining 50 per cent shares are held by Indraprasth Gas Limited (hereinafter referred to as “IGL”). Neither Central Government nor State Government has any stake in CUPGL; no financial commitment or liability in CUPGL has been undertaken by any of the Government; it does not perform any Governmental work and is not supported and financed by either of the Governments, therefore, writ petition under Article 226 of the Constitution against CUPGL is not maintainable.

8. On the factual aspects, it is said that petitioner was appointed by letter of appointment dated 09.04.2009, pursuant whereeto, he joined on 08.05.2009. He was confirmed by letter dated 02.07.2010 with effect from 08.05.2009. Noticing certain financial as well as operational irregularities on the part of petitioner, a charge-sheet was served upon him, containing seven charges bearing numbers A to G along with Annexure-A indicating incidents of violation of procedural norms. An independent Inquiry Committee was constituted by Chairman, CUPGL comprised of General Manager (E&P) and Senior Manager (Safety) of Mahanagar Gas Limited, Pune. Inquiry was conducted in which petitioner also submitted written submission on 19.06.2013 and made oral submissions. Based on inquiry report and also finding loss of confidence, Managing Director found petitioner unsuitable for continuance in service and terminated him by order dated 01.08.2013. It is said that principles of natural justice have been followed and averments made otherwise are incorrect.

9. A Supplementary Counter Affidavit has also been filed

reiterating that CUPGL is not an instrumentality of State and not 'State' within the ambit of Article 12 of Constitution of India. An order of Central Information Commission, New Delhi passed on 19.08.2016 has been placed on record wherein an application filed under Right to Information Act, 2005 (hereinafter referred to as "RTI Act, 2005") was rejected on the ground that CUPGL does not fall within the ambit of RTI Act, 2005.

10. After receiving Supplementary Counter Affidavit, petitioner has filed a Supplementary Rejoinder Affidavit sworn on 25.07.2014 disputing basically the issue raised on behalf of respondents-2 and 3 that it is not a 'State' within the meaning of Article 12 of Constitution. This fact is not disputed that CUPGL is a Public Company, Limited by Shares, registered under Act, 1956. It has registered Office at 7<sup>th</sup> Floor, UPSIDC Complex, A-1/4, Lakhanpur, Kanpur. It is also not disputed that 25 per cent shares are held by BPCL and GAIL each and remaining 50 per cent shares are held by IGL. It is, however, said that BPCL is a 'State' within the meaning of Article 12 as held in **Som Prakash Rekhi Vs. Union of India (UOI) and another (1981) 1 SCC 449**. GAIL is a Natural Gas Processing and Distribution Company of Government of India engaged in the business of Natural Gas, Liquid Hydrocarbon, Liquefied Petroleum Gas Transmission, Petrochemical, City Gas Distribution, Exploration and Production, Electricity Generation etc. IGL is also a joint venture of BPCL and GAIL engaged in supply of Piped Natural Gas and operating CNG filling Stations incorporate mainly to take over and operate Delhi City Gas Distribution Project. In view of the fact that 100 per cent share holding of CUPGL is held by Central Government's Companies or Joint Ventures, therefore, CUPGL is held also a 'State' within meaning of Article 12 of Constitution of India. Reference is also made to Supreme Court Judgment in **Balmer Lawrie and Company Limited and others Vs. Partha Sarathi Sen Roy and others (2013)**

**8 SCC 345** observing that a subsidiary Company of a Government Company will also satisfy the test of being an instrumentality of 'State' within the meaning of Article 12 of Constitution.

11. In the Rejoinder Affidavit, it is stated that petitioner was never given any opportunity to appear in departmental inquiry pursuant to charge-sheet issued to him and no oral submissions were made by petitioner on 19.06.2013.

12. A Supplementary Rejoinder Affidavit has also been filed replying Supplementary Counter Affidavit stating that order of Central Information Commission placed on record along with Supplementary Counter Affidavit was rendered in a different set of facts and has no application to the present case.

13. In **Writ Petition No. 54841 of 2013** (hereinafter referred to as "Second Petition"), petitioner Subhash Verma was appointed as Chief Manager (O&M) on 30.03.2010 and placed on probation for one year. He was served with charge sheet dated 24.05.2013. He submitted reply dated 19.06.2013 denying the charges. Thereafter, he was also required to appear at Kanpur Office through E-mail dated 20.06.2013 between 24.06.2013 to 28.06.2013 but no discussion took place. Again vide E-mail received on 25.06.2013 he was required to appear on 25.06.2013 when he found three persons sitting in Conference Room and also came to know that a private company namely, K.P.M.G., a Chartered Accountant Firm, has been appointed as Inquiry Agency. They made certain queries and again called him on 28.06.2013 but on 28.06.2013 none was found in the Kanpur Office though petitioner attended the Office. Thereafter, petitioner sent a letter dated 10.07.2013 requiring Employer to serve conclusions arrived at by Inquiry Committee or higher Officers but did not receive any reply and ultimately received order of termination dated 01.08.2013.

14. Dispute in the present writ petitions relate to correctness of

termination orders of petitioners. The preliminary objection raised on behalf of respondent-employer is that writ petition is not maintainable as it is not a 'State' within the meaning of Article 12 of Constitution. Therefore, in our view the issues need be considered in this writ petition are:

- (1) Whether CUPGL can be said to be 'State' within the meaning of Article 12 of Constitution?
- (2) Even if Question-(1) is answered in favour of petitioner, whether writ petition is maintainable in the matter of termination of service of employee of CUPGL when terms and conditions are not governed by any statutory provisions and are purely within the realm of contract?
- (3) Whether relief of reinstatement can be granted to petitioners when terms and conditions of employment are not governed by statutory provisions, if order of termination is said to be vitiated in law?
- (4) Whether order of termination is illegal or bad in law?

15. Now coming to first question, we find that three facts are not in dispute:

- (i) CUPGL is in the nature of a Subsidiary Company whose share holdings in entirety are owned by three Companies, namely, BPCL, GAIL and IGL.
- (ii) BPCL and GAIL though Companies registered under Act, 1956 but they are Central Government Companies and their share holding is with Central Government. They are admittedly 'State' within the meaning of Article 12 of Constitution.
- (iii) IGL is also a Joint Venture of BPCL and GAIL.

16. The submission of learned counsel appearing for respondents-2 and 3 is that there is no deep pervasive control exercised by Government over CUPGL. No financial aid is provided by State Government or Central Government. The mere fact that the

Companies, namely, BPCL and GAIL are Central Government Companies would not bring CUPGL within the ambit of a Government Company wherein Central Government has a deep and pervasive control, if not directly but indirectly. Petitioner's counsel submitted that since Central Government is a controlling authority having 100 per cent share holding in BPCL and GAIL which are in effect joint holding companies of CUPGL, therefore, it can be said safely that Central Government has absolute control over CUPGL and it is 'State' within the meaning of Article 12 of Constitution.

17. The issue, when a Company can be said to be 'State' within the meaning of Article 12 of Constitution, has been considered by Courts time and again in the last more than six decades.

18. Initially, in **Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and others AIR 1967 SC 1857**, in the context of State Electricity Board, a statutory body constituted under Section 5 of Electricity Supply Act, 1948, this issue was raised, whether it is 'State' within the meaning of Article 12 of Constitution. Court said that a body which is performing certain public or statutory duties, such duties if carried out for the benefit of public, and not for private profit, then it will be a 'State' within the meaning of Article 12.

19. In **Sukhdev Singh and others Vs. Bhagatram Sardar Singh Raghuvanshi & Anr. AIR 1975 SC 1331**, similar view was expressed but it was also held that such an authority is not precluded from making a profit for public benefit. However, Court held that employees of Corporation may not be servants of either the Union, or of the State, but that will not denude status of the body of being 'State' within the meaning of Article 12 of Constitution and its actions may be examined on the anvil of arbitrariness, equality etc.

20. In **Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors. AIR 1979 SC 1628**, Court examined this issue at much length and observed that in order to find out whether a



Corporation satisfies the test of being 'State ' within the meaning of Article 12, following aspects must be examined:

- (1) 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) Whether Corporation enjoys monopoly status which is State-conferred or State-protected is a very relevant factor.
- (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 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.
- (6) If a department of Government is transferred to a Corporation, it would be a strong factor supportive of this inference that Corporation is an instrumentality or agency of Government.

21. This judgment was followed and the above factors were reiterated subsequently in **Ajay Hasia etc. Vs. Khalid Mujib Sehravardi and others (1981) 1 SCC 722** and **Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Assn. & Anr. (2002) 2 SCC 167**.

22. A seven-Judges Bench in **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors. (2002) 5 SCC 111**, on this aspect observed, if the body is financially, functionally and administratively dominated by, or is under the control of Government

and such control is particular to the body in question, and pervasive, the cumulative effect would establish that body as a 'State' within the meaning of Article 12. Court also held that when control exercised is merely regulatory, whether under a Statute or otherwise, such control would not be adequate to render a body 'State' within the meaning of Article 12 of Constitution. Court held that financial support of State, coupled with an unusual degree of control over the management and policies of a body, may lead to an inference that it is a 'State'. Additionally, other factors such as, whether the Company/Corporation performs important public functions, whether such public function(s) are closely related to governmental function, and whether such function(s) are carried out for the benefit of the public, etc. are also relevant factors to determine whether such body is an 'State' within the meaning of Article 12 of Constitution.

23. In **M/s. Zee Telefilms Ltd. and another Vs. Union of India and others (2005) 4 SCC 649**, Court examined whether Board of Cricket Control of India is a 'State' within the meaning of Article 12 of Constitution. Answering this issue in negative, Court held:

- (1) Board is not created by a statute.
- (2) No part of the share capital of the Board is held by Government.
- (3) Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.
- (4) Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-protected.
- (5) There is no existence of a deep and pervasive State control. Control, if any, is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely

related to governmental functions.

(6) Board is not created by transfer of a government-owned Corporation. It is an autonomous body.

24. Having said so, a word of caution was also added by observing that in the earlier judgments, the term “other authorities” in Article 12 was found to be introduced at the time of framing of the Constitution with a limited objective of granting judicial review of actions of such authorities which are created under the Statute and which discharge State functions. However, subsequently in **Rajasthan State Electricity Board (supra)** and **Sukhdev Singh (supra)** noticing the socio-economic policy of Country, Courts thought it fit to expand the ambit of term "other authorities" to include bodies other than statutory bodies. This development of law by judicial interpretations culminated in seven-Judges judgment in **Pradeep Kumar Biswas (supra)**. In the meantime, in **Balco Employees' Union (Regd.) Vs. Union of India and Ors. (2002) 2 SCC 333**, Court noticed again change in socio-economic policy of Government of India and found that State is now distancing itself from commercial activities and concentrating on governance rather than on business. Court said in **Pradeep Kumar Biswas (supra)** that the situation prevailing at the time of **Sukhdev Singh (supra)** is not in existence at least for the time being, hence, there seems to be no need to further expand the scope of "other authorities" in Article 12 by judicial interpretation at least for the time being. Court also noticed that in a democracy there is a dividing line between a State enterprise and a non- State enterprise, which is distinct and the judiciary should not be an instrument to erase the said dividing line unless, of course, the circumstances of the day require it to do so.

25. Considering as to what will be the sovereign functions and whether it is extended to include all welfare activities, initially it was held that functions approved being sovereign are defence of the

Country, raising of armed forces, making peace or waging war, foreign affairs, the power to acquire and retain territory etc., in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others (1978) 2 SCC 213**, Court held that these terms are used to define the term "governmental functions", despite the fact that there are difficulties that arise while giving such a meaning to the said terms, for the reason that the Government has now entered largely in the field of industry. The question was, what is definition of "industry". While answering the above question, Court held that only those services which are governed by separate Rules and Constitutional provisions such as Articles 310 and 311, should strictly speaking be excluded from the sphere of industry by necessary implication. Subsequently it was also held that every governmental function need not be sovereign. State activities are multifarious. A scheme or a project, sponsoring trading activities may well be among the State's essential functions, which contribute towards its welfare activities aimed at the benefit of its subjects, and such activities can also be undertaken by private persons, Corporates and Companies. Thus, it was said that considering wide ramifications, sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the State alone. Such functions may include legislative functions, the administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon etc. Mere dealing in a subject by State, or the monopoly of State in a particular field, would not render an enterprise sovereign in nature.

26. In **Balmer Lawrie and Company Limited and others Vs. Partha Sarathi Sen Roy and others (supra)**, Supreme Court had a retrospect of various authorities and then said that a public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of

the public and not for private profit. Article 298 of Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the government and legislature alone and it includes within its ambit various other instrumentalities of State action. The law may bestow upon such organization, the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The State being an abstract entity, can only act through an instrumentality or an agency of natural or juridical persons. The concept of an instrumentality or agency of the government is not limited to a corporation created by a statute, but is equally applicable to a company, or to a society.

27. Dealing with the term “pervasive control” Court in **Balmer Lawrie and Company Limited and others Vs. Partha Sarathi Sen Roy and others (supra)** held that term 'control' means check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word 'regulate', would mean to control or to adjust by rule, or to subject to governing principles.

28. Holding certain factors relevant to determine whether a body is 'State' within the meaning of Article 12 of Constitution of India or not, Court in **Balmer Lawrie and Company Limited and others Vs. Partha Sarathi Sen Roy and others (supra)** said, whether Company/Corporation is an instrumentality or an agency of the State, can be examined by looking to the following aspects:

- (A) if the body carries on business for the benefit of the public;
- (B) whether the entire share capital of the company is held by the Government;
- (C) whether administration of body is in the hands of a Board of Directors appointed by the Government;
- (D) if Board of Directors has been appointed by the Government, whether such Board is completely free from

- governmental control in the discharge of its functions;
- (E) whether the body enjoys monopoly status;
- (F) whether the functions carried out by the Company/ Corporation are closely related to governmental functions,
- (G) whether a department of Government has been transferred to such body;
- (H) whether the body is financially, functionally and administratively under the control of the Government.

29. Looking to the exposition of law discussed above and position of CUPGL in the case in hand, it cannot be doubted that its functional control is in the hands of Public Sector Companies like, BPCL, GAIL and IGL. Clause 120 of Article of Association of CUPGL shows that so long as holding is equal, both i.e. BPCL and GAIL will have equal representation in the Board. Chairman of Board of CUPGL shall be either a whole time Director of GAIL or Chairman or Managing Director of BPCL or his nominee. Therefore, GAIL and BPCL both have pervasive control in CUPGL. Since holding Companies are Central Government Companies, which have pervasive control, and BPCL having already been held to be 'State' within the meaning of Article 12 of Constitution, we do not find any hesitation in holding that CUPGL is an instrumentality of State and within the ambit of term 'other authorities' under Article 12 of Constitution of India it is a 'State' within Article 12. Question-(1), therefore, is answered accordingly.

30. Now we come to Questions-(2), (3) and (4), which, in our view, can be dealt with together. In the present case, terms and conditions of employment, applicable to petitioner are not challenged that such terms and conditions are arbitrary and violative of Article 14 of Constitution read with Section 23 of Indian Contract Act, 1872 (hereinafter referred to as "Act, 1872") being unfair, unreasonable or unconscionable, and against public policy. The order of termination is

challenged on the ground that petitioner has not been given adequate opportunity of defence and termination is in violation of principles of natural justice. It is not in dispute that terms and conditions are not governed by any Statute or statutory provision or by any provision made under any authority of Statute. Petitioner being in the Cadre of Manager, his terms and conditions are also not governed by Standing Orders made by Employer with respect to employees governed by provisions of Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as “Act, 1946”). In these circumstances, in the cases like petitioner, consistently it has been laid down that employment is simply a part of contract. If employment is terminated or contract of service is terminated, Court shall not grant relief of reinstatement, i.e. specific performance of contract of personal service, as it is barred by the provisions of Specific Relief Act, 1963 (hereinafter referred to as “Act, 1963”) and, therefore, no remedy under Article 226 shall be available since employee, if complains about wrongful termination of service, then must avail remedy in common law by claiming damages.

31. As we have already said that CUPGL even if taken to be a 'State' within the meaning of Article 12 of Constitution, this by itself would not mean that petitioner can claim status of a Government Servant or holding a post governed by 'status'. Nature of engagement/appointment of petitioner is not to be governed by 'status' but by a 'contract of service' entered into between master and servant. A distinction between an appointment under a contract and status was noticed and explained by Supreme Court in **Roshan Lal Tandon Vs. Union of India AIR 1967 SC 1889**. Court held that when a matter is governed by status, the employee has no vested contractual rights in regard to the terms of service but where employment is purely in the realm of a simple contract of employment, it is strictly governed by terms and conditions of employment settled between the parties. To

remind the difference between 'status' and 'contractual appointment', we may take up case of a Government Servant. Origin of employment in a Government department is contractual. There is an offer and acceptance in every case but once appointed to the post or office, the person appointed, i.e., Government Servant, acquires a status and his rights and obligations are no longer determined by consent of both the parties but same are governed by Statute or statutory rules which may be framed and altered unilaterally by employer, i.e., the Government. Legal position of a Government Servant, thus, is more one of 'status' than of a 'contract'. The hallmark of 'status' is that attachment to a legal relationship of rights and duties must be by public law and not by mere agreement of parties. Relationship between Government (employer) and Government Servant (employee) is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. In the language of jurisprudence, 'status' is a condition of membership of a group, whereof powers and duties are exclusively determined by law and not by agreement between the parties concerned. Thus, where appointment and conditions of service are governed by Statute, relationship of 'employer' and 'employee' is that of 'status' and not a mere contract. However, in other cases, it is purely a contract of service resulting in a relationship of ordinary master and servant.

32. In the present case also, relationship of employment between petitioner and CUPGL is purely and simply an ordinary contract of service which is not governed by any statute or statutory provision. In such cases, a contract of service cannot be sought to be enforced by Court of law by giving relief of reinstatement or continuance in employment as this relief is barred under Act, 1963.

33. In **Executive Committee of U.P. State Warehousing Corporation, Lucknow Vs. C.K. Tyagi AIR 1970 SC 1244**



considering the question as to when such a relief is granted Apex Court observed:

*"Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well-recognised exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by doing so the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the Industrial Law, jurisdiction of the Labour and Industrial Tribunals to compel the employer to employ a worker whom he does not desire to employ, is recognised. The Courts are also investigated with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, ... "*

34. Again in para 25 of the judgment, Court held:

*"The position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are: To grant such a declaration in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311. (2) Reinstatement of a dismissed worker under Industrial law by Labour or Industrial Tribunals. (3). A statutory body when it has acted in breach of a mandatory obligation, imposed by statute".*

35. In **Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College** (1972) 1 SCC 623, Court said that it is well settled that when there is a termination of a contract of service, a declaration that the contract of service still subsists would not be made in the

absence of special circumstances, because of the principle that Courts do not ordinarily enforce specific performance of contract of service. Referring to earlier decision in **Executive Committee of U.P. State Warehousing Corporation Ltd. Vs. Chandra Kiran Tyagi (supra)**, Court further said that if master rightfully ends the contract, there can be no complaint but if master wrongfully ends the contract, then servant can pursue a claim for damages. It is said, *“So even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated.”*

36. The matter was again considered by a Constitution Bench in **Sirsi Municipality Vs. Cecelia Kom Francis Tellis (1973) 1 SCC 409** and therein Court held that cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit against wrongful dismissal and for claiming damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief.

37. Second category noticed by Court is where master and servant's relationship is governed by Industrial Law. In such cases, a servant, who is wrongfully dismissed, may be reinstated since Industrial Law contains special provisions and this is a departure from the reliefs available under Indian Contract Act and Specific Relief Act which do not provide for reinstatement of a servant.

38. The third category is where employment is in State or other public or local authorities or bodies created under statute. In such

cases, if termination is contrary to Rules, Court can declare such termination illegal and grant relief of reinstatement for the reason that in such case, Court keeps employer within the limits of its statutory powers. The above view has been reiterated in **Executive Committee of Vaish Degree College, Shamli and others Vs. Lakshmi Narain and others AIR 1976 SC 888** (paras 9, 10, 13 and 17); **Smt. J. Tiwari Vs. Smt. Jawala Devi Vidya Mandir and others, AIR 1981 SC 122** (paras 4 and 5); and **Life Insurance Corporation of India Vs. Escorts Ltd., and others AIR 1986 SC 1370** (paras 101, 102). Similar view has been taken by this Court also in **A.K. Home Chaudhary Vs. National Textile Corporation U.P. Ltd., Kanpur 1984 UPLBEC 81**; **B.M. Varma Vs. State of U.P. and others 2004 (4) AWC 2866**; and **Vivek Kumar Mishra and others Vs. State of U.P. and others, 2008(4) ESC 2811**.

39. Recently also, in **Kailash Singh Vs. The Managing Committee, Mayo College, Ajmer and others. (2018) 10 SCALE 638**, where dispute related to termination of an employee of Mayo College, Court held that employment was governed by simple contract of employment and, hence, no relief of reinstatement can be granted, but employee, if wrongfully terminated, may claim damages.

40. Following the above authorities, same view has been expressed and reiterated by this Court subsequently also in **State of U.P. & Others Vs. Anil Kumar Singh Yadav & Others (2013) 2 UPLBEC 1588** and **Writ Petition (Writ-A) No. 36854 of 2001 (Rajesh Kumar Srivastava Vs. State of U.P. and others)** decided on 09.05.2016.

41. In view of discussions made hereinabove, no relief, as sought for, can be granted to petitioners. Both the writ petitions lack merits and are, accordingly, dismissed.

Dt. 20.11.2018

Vikram/PS