
(1992) 08 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No. 2153 of 1990

Bala Prasad Rajoriya

APPELLANT

Vs

Madhya Pradesh Electricity Board and Others

RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311
Electricity (Supply) Act, 1948 — Section 78A, 79
Madhya Pradesh Electricity Board Regulations — Regulation 10, 5

Citation : (1992) 2 MPJR 192 : (1993) 38 MPLJ 7 : (1993) MPLJ 7

Hon'ble Judges : T.N. Singh, J; S.K. Dubey, J; R.C. Lahoti, J

Bench : Full Bench

Advocate : Arun Mishra, for the Appellant; K.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus commanding the respondents/M.P. Electricity Board through its Chairman and others (for short, the "Board") to continue him in employment till the expiry of the period of one year as per appointment order (Annexure P/1) dated 7-2-1990 and for quashing of the order of termination of re-employment (Annexure P/3) dated 23-8-1990.

The facts leading to this petition are that the petitioner on his retirement from Police Department from the post of Inspector, was appointed as Vigilance Inspector by the Board for a period of one year on the terms and conditions contained in Annexure P/1; the contract was terminable in terms of condition No. (iv) by either side on one month's notice or on one month's salary (including allowances) in lieu thereof. The petitioner was posted in the office of Superintending Engineer (O & M), Morena, where he assumed the charge on 4-4-1990. The Board served a notice (Annexure P/3 dated 23-8-1990) on 24-8-1990 on the petitioner terminating his employment on the expiry of one

month from the date of service of the said notice. The petitioner having failed in his representation against the order of termination of service, presented this petition.

In the return, the stand taken is that the Board in discharge of its functions and in the matter of policy is guided by such directions as may be given or issued by the State Government from time to time u/s 78A of the Electricity (Supply) Act, 1948 (for short, the "Act"). The State Government vide Annexure R/1 issued instructions to all its Departments and Undertakings that on attaining the age of superannuation, the services of the employee should not be extended or he should not be re-employed. In case any employee has been re-employed on contractual basis on the completion of the term or on the expiry of 30th June 1990 whichever is earlier, services of such employee should be terminated, and he should be relieved; hence, the contract of re-employment was terminated by giving one month's notice. The petitioner is not entitled to any declaration, the employment was purely contractual, remedy for the breach of contract is to claim damages in a civil suit, and for that the extraordinary jurisdiction under Article 226 of the Constitution cannot be invoked.

True, ordinarily, when State or an Authority entering into the field of ordinary contract, acts purely in its executive capacity, then relations are governed not by the constitutional provisions but by the legal valid contract which determines the rights and obligations of the parties inter se. They can claim only rights conferred upon them by the contract in the absence of any statutory obligations on the part of such Authority (i.e., the Board, in this case) in the said contractual field.

A look to the terms of appointment order (Annexure P/1) indisputably makes it clear that it is in the nature of contract, the petitioner was entitled to continue in office on the post in question till the expiry of one year on the terms and conditions stated in the contract. Condition No. (1) states that petitioner's re-employment will be governed by the provisions of the Service Regulations framed by the Board u/s 79(c) of the Act; condition No. (iv) of the contract speaks that the, re-employment will be subject to other terms and conditions of service as applicable to the employees of the corresponding rank, i.e., Class III posts. It is clear that though the Board has applied the conditions of service as applicable to regular employees of the post, the Board has not treated the petitioner as a regular employee, who had a vested right to continue to hold the post till he attains the age of retirement. But, looking to the conditions, in particular Nos. (i) and (iv), it is candid clear that the petitioner was an employee for all purposes during the tenure of his office. Therefore, in such a situation, even if there was a term of termination of the appointment on one month's notice or on payment of one month's salary (including allowances) in lieu thereof, the petitioner's services could not have been terminated during the tenure of one year, unless the petitioner was not found physically and mentally unfit or the continuation of the employment of the petitioner was not in the interest of the Board, or for commission of any act of misconduct, etc. Therefore, the contention of Shri Arun

Mishra, counsel for the petitioner, placing reliance on the decisions of the apex Court in cases of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, that such a contract or its term empowering the Board to terminate the services of an employee during the subsistence of contract is void u/s 23 of the Contract Act, as being opposed to public policy, is violative of Article 14 of the Constitution, has got a force in the facts of the case.

The appointment order does not contain any term that tenure of office will be subject to the directions issued by the State Government u/s 78A of the Act from time to time. Therefore, the appointment of petitioner, which, indisputably, is in the nature of contract, could not have been terminated before the expiry of one year. Hence, the order of termination prematurely terminating the contract of re-employment is invalid, as said by the Supreme Court in the case of contract, like the present one, in case of State of Uttar Pradesh and Others Vs. Ex-pilot Officer Arun Govil,

In view of the above, the contention of Shri K.N. Gupta, counsel for the Board, that the petitioner should resort to the remedy of civil suit for claiming damages for the unexpired period, cannot be accepted, as on admitted facts the petitioner has made out a case of existence of relationship between him and the Board, an Authority under Article 12 of the Constitution of India. Mandamus which is a very wide remedy, cannot be refused and must be easily available to reach injustice wherever it is found.

As the termination of petitioner's re-employment was illegal and invalid and the petitioner was entitled to continue on the post till the expiry of the period of contractual employment, which has expired during the pendency of this petition, we, in the circumstances, direct that the petitioner would be entitled to salary (including allowances) for the unexpired period under the contract in accordance with Annexure P/1, which shall be paid to him within a period of two months from today.

In the result, the petition is allowed in the manner aforesaid with no order as to costs.

R.C. Lahoti, J.

I have had the advantage of going through the order proposed by my learned brother S.K. Dubey, J. Having gone through it I have been unable to persuade myself to agree with the same.

The petitioner having retired from service of the Police Department as having attained the age of superannuation, was re-employed as Vigilance Inspector under the M.P. Electricity Board for a period of one year vide order dated 7-2-1990 (Annexure P-1). One of the terms of appointment was :

"2(v) During the period of re-employment the appointment will be terminable on one month's notice on either side or on payment of one month's salary

(including allowances) in lieu thereof."

The petitioner joined on 4-4-1990. In accordance with Clause 2(v) abovesaid of the appointment order, the M.P. Electricity Board proposed to terminate the petitioner's services by giving one months notice and vide notice dt. 23-8-1990 (Annexure P-3) informed the petitioner that his re-employment shall terminate on expiry of one month from the date of service of notice on him. The notice was served on the petitioner on 28-8-1990.

On 10-9-1990 the petition was filed seeking a writ of Mandamus quashing the notice dated 23-8-1990, (Annexure P/3). Though the petitioner had prayed for an ad interim writ staying the operation of notice, Annexure P-3, but no interim relief was allowed to the petitioner.

The petition has been contested by the respondent Board on very many grounds, the substance whereof is that the Service Regulations framed by the Board u/s 79(c) of Electricity Supply Act, 1948 does not make any provision for re-employment, meaning thereby that the petitioner re-employment was merely contractual having no statutory protection and hence would be governed by the terms of the contract. There were 14 Vigilance Inspectors serving the Board on re-employment, the services whereof including the petitioner have been dispensed with consistently with the policy decision of the Government of Madhya Pradesh dated 25-5-1990 (Annexure R-1) which is binding on the Board. The policy decision, Annexure R-1, shows that the State Government had decided not to re-employ superannuated Government servants and if any one was so re-employed, then the services should be dispensed with; the petitioner's services were dispensed with in accordance with the policy decision, Annexure R-1.

The material fact which gives entirely a different colour to the texture of the petitioner's case is that he was not appointed to an employment but was taken in re-employment On behalf of the petitioner no provision of law has been pointed out affording statutory protection to the petitioner and the notice, Annexure P-3, conflicting with any provision of law. In short, it is a case where a contractual appointment by way of re-employment has been brought to end consistently with the terms of the contract.

In State of Assam and Another, etc. Vs. Basanta Kumar Das, etc. etc., the Apex Court has held :-

"A Government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age it is only in exercise of the discretion of the Government. The Court would not go into the reasons which weighed with the authority in coming to a particular conclusion unless he was guided by ulterior motive or the decision contravened some law."

It is clear from the abovesaid dictum of the Apex Court which is the law of the land that re-employment beyond the age of superannuation is purely

discretionary and termination thereof may be vulnerable only on two counts : (i) if it was guided by ulterior motive; (ii) if it contravenes some law.

In *D.N. Dhar and Ors. v. State of Jammu and Kashmir* AIR 1964 J & K 92, a Full Bench of Jammu and Kashmir High Court had also an occasion to deal with a similar situation. The Full Bench held :

"Once the right of a permanent civil servant to hold the post comes to an end on attaining the age of superannuation no fresh right to hold the post is created in him merely because he is permitted to remain in service for a certain period. A right is not conferred upon him under which he can insist to hold the post till the expiry of the extended period of service."

The Full Bench went ahead to hold that permission to remain in service vested the employer with an implied power to revoke the permission under which the employer continued the employee to remain in service after superannuation. The termination could be challenged if only it stigmatised the employee's career.

Assistance may be taken from the law laid down by the Apex Court in *The State of Assam and Others Vs. Premadhar Baruah and Others, etc.*, a case though not directly in point, yet which lays down that retention of a Government servant beyond the age of superannuation may be withdrawn by the Government at its discretion because such retention in service does not confer any right on the Government servant.

It will be useful to read the law laid down by the Apex Court in *Vaish Degree College v. Lakshmi* AIR 1976 SC 888 which still holds the field. Their Lordships laid down the law in the following terms

"..... a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions -- (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute."

This decision has been affirmed in *Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others*, and reiterated in *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, and adverted to in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, at p. 1611. This position of law has been noted by the Apex Court recently in *Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another*, at para 17.

Vaish Degree College case (supra) has been re-affirmed by the Apex Court in *Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another Vs. Badri Nath Dixit and*

others,

Article 311 of the Constitution of India is not applicable to the employee of the M.P. Electricity Board. The petitioner has not claimed any relief under the Industrial Law. No breach or violation of the mandatory provisions of any statute has been pointed out. The petitioner does not fall in any of the three categories contemplated by Vaish Degree College's case (supra).

The Service Regulations of the Board framed u/s 79(c) of Electricity (Supply) Act, 1948 do not make any provision for re-employment of superannuated Government servants. On the contrary the Service Regulations provides :

"5. Method of appointment. -

(i)and(ii).....

(iii) Appointment on Special Contract. -- The Board may appoint any person or persons on special contract on such terms and conditions as it may deem necessary and in such cases, these Regulations shall apply to such person or persons to the extent they are not inconsistent with the said terms and conditions."

x x x x x "10. Termination of Service-- (a) Unless otherwise specified in the appointment order in any particular case, the service of a servant of the Board may be terminated without notice.

(i) during the period of probation or on its completion and without assigning any reasons therefor;

(ii) as a result of disciplinary action.

(b) Where the services of the servant of the Board governed by special conditions are terminated the Board may give pay in lieu of notice for the period by which the notice period falls short."

The petitioner having been taken in re-employment after superannuation cannot claim to have been retrenched as re-employment after superannuation is not an employment contemplated by Section 2(oo) of the Industrial Disputes Act, 1947. Binoy Kumar Chatterjee Vs. Jugantar Limited and Others,

Section 78A of the Electricity (Supply) Act, 1948, which governs the respondent Board, provides :

"78-A. Directions by the State Government -- (i) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government."

It is clear that the policy decision taken by the State Government is binding on the Board and the Board has no option but to abide by it.

I am of the opinion that it is not necessary for appointment order to have

mentioned that the tenure of office shall be subject to the directions issued by the State Government u/s 78A of the Electricity Supply Act, 1948. Every contract has to be read subject to the law. The law empowers the State Government to take policy decisions and such policy decisions bind the Board. They would necessarily bind the employees too.

The action of the Board in carrying out the policy decision is not open to challenge unless the policy decision itself was impugned. That we cannot do for two reasons ; firstly, the Government of Madhya Pradesh taking policy decision contained in Annexure R-1 is not a party to the petition and in its absence we cannot pronounce upon its validity or otherwise; secondly, as held by the Apex Court in *State of M.P. and Ors. v. Nandlal Jaiswal and Ors.* 1907 MPLJ 250 (SC):

"there are two important factors which throw considerable light in determining whether a policy decision is mala fide or motivated by improper considerations. One relates to the manner and method of reaching the policy decision and the other to the circumstances in which the policy decision is taken and the considerations which have entered into the making of it."

Not to talk of any allegation of mala fides or improper motivation on the part of the State Government in taking the policy decision Annexure R-1 to say the least, there is not even a challenge thrown to the State policy decision.

My learned brother S. K. Dubey. J. has referred to two decisions, viz., *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, and *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, for holding that term (v) of para 2 of the appointment order, Annexure P-1, is void u/s 23 of the Contract Act, also violative of Article 14 of the Constitution of India. I respectfully disagree. None of the two cases of the Apex Court contemplates such a term being rendered void and unconstitutional in a contract of re-employment.

In *State of Uttar Pradesh and Others Vs. Ex-pilot Officer Arun Govil*, also does not help the petitioner, in my humble opinion. It was not a case of re-employment after superannuation. Arun Govil was discharged from Air Force having been found unfit. The State of Uttar Pradesh issued a scheme for giving benefit to ex-Military officers affording contractual re-employment to them subject to suitability, but not beyond 58 years of age. Arun Govil having been afforded such opportunity, his term of employment was extended from time to time. Lastly, he was to serve upto 30-8-1985 and on 29-3-1985 his services were terminated by serving a notice and payment of one month's salary. The Division Bench of Allahabad High Court found the order of termination invalid because it was founded on the basis of vigilance report adverse to the petitioner therein, and the petitioner Arun Govil was not given any opportunity to show cause against the proposed action. The matter did not end there. The petitioner Arun Govil sought for review of the order. The Decision Bench allowed the review petition granting him further relief by reference to termination order and

directing the State Government to make available to the petitioner a post ordered to be kept vacant. It was this order rendered in review petition which was under challenge before the Supreme Court. The Supreme Court set aside the order passed in review and while doing so observed that respondent Arun Govil was rightly held entitled by High Court to salary and allowances due to him till 30-8-1985 if the order of termination of service served on him on 29-3-1985 was found to be an invalid one. Their Lordships have nowhere held themselves that order of termination dated 29-3-1985 was invalid as that was not the issue before them. It is clear from the facts stated in the order of the Supreme Court that the original order of the Division Bench of the Allahabad High Court was not under challenge before their Lordships. The High Court had adjudged the order of termination to be invalid as founded on the vigilance report adverse to employee, which order stigmatised the person affected and hence was invalid. Needless to say such is not the case before us.

To sum up, even at the risk of repetition, the present one is not a case where the petitioner's employment is statutorily protected; in terminating petitioner's employment no law is shown to have been violated; it is not a case where the termination stigmatises the petitioner; it is not a case where the respondent Board has acted arbitrarily or by adopting unfair policy of pick and choose -- keeping out some one and retaining some others. It is a case of pure and simple contractual re-employment brought to an end in accordance with contract and following an uniform policy laid down by State, binding on the Board.

For the foregoing reasons differing from my learned brother, I am of the opinion that the petitioner is not entitled to any relief. The petition is liable to be dismissed, though without any order as to costs.

T.N. Singh, J.

Two learned Judges of this Court having reached opposite conclusions and expressed conflicting view in their separate judgments disposing of this petition, the matter has come before me for resolving the controversy and final disposal.

Facts are few, short and simple. Petitioner was a Government servant in the Police Department and was enjoying pension after retirement. Under Order, Annexure P/1, dated 7-2-1990, passed by Director (Vigilance and Security), Madhya Pradesh Electricity Board (MPEB), he is enforcing his right to continue in Service of the Board and is challenging the order passed, Annexure P/3, dated 23-8-1990 by the same appointing authority terminating his services.

It is necessary in the context of the sizzling controversy to extract in extenso the text of the Order, Annexure P/1 :

"Shri B.P. Rajoriya retiring police personnel is re-employed as Vigilance Inspector under the Board's service for a period of one year and posted to the office of Superintending Engineer (O & M), M.P.E.B., Morena with effect from the date of assuming charge.

The re-employment will be subject to the following terms and conditions: --

(i) During the period of his re-employment he will be governed by the provisions of the Service Regulations framed by the Board u/s 79(c) of the Electricity (Supply) Act, 1948.

(ii) He will draw the basic pay equivalent to the last substantive pay drawn by him at the time of retirement minus pension.

(iii) He will draw the Dearness Allowance at the prevailing rates on the re-employed pay plus pension as per existing rules of the Board.

(iv) Other terms and conditions of service as applicable to the employees of the corresponding rank i.e. Class-III posts.

(v) During the period of re-employment the appointment will be terminable on one month's notice on either side or on payment of one month's salary (including allowances) in lieu thereof.

(vi) The appointment is subject to the condition that he continues to be physically fit and mentally alert. He will have to produce a Medical Certificate from the Senior Medical Officer, M.P.E.B. Hospital, Jabalpur.

(vii) It should be noted that the appointment will be terminated on attaining the age of 60 years and no extension should be normally granted."

In so far as the Order, Annexure P/3 is concerned, suffice it to mention that it proposed to terminate the services of the petitioner by giving him one month's notice, stating :

"Whereas it was specified in para (v) of the order that the re-employment will be terminable on one month notice on either side or the payment of one month's salary (including allowances) in lieu thereof

AND WHEREAS, it is proposed to terminate your services by giving one month's notice.

NOW THEREFORE, take notice that your re-employment shall be terminated on expiry of one month's notice from the date of service of this notice on you."

Few admitted facts of the case are that the petitioner, before re-employment, was Inspector in the Police Department and that on his re-employment, by respondent/M.P.E.B., he joined service on 4-4-1990; the notice discontinuing his re-employment was served on him on 28-8-1990. During the notice-period, he lodged this petition on 17-9-1990 on his services being threatened to be discontinued, but he got no interim stay to retain him in service.

Petitioner's case, shortly put, is that he had attained the age of 59 years and was entitled to serve on re-employment till he attained on 10-2-1992 the age of 60 years and that in any case, before expiry of one year on 4-4-1991, he could not be removed in terms of the order of his re-employment, (Annexure P-1).

During the short period of service under respondent/M.P.E.B. he had done commendable job and his re-employment for two years had been recommended by the Superintending Engineer. His case is also that one Had Singh Sharma, Police Inspector, Special Branch, Morena, was called for interview for the post of Vigilance Inspector which indicated that there were several posts of Vigilance Inspector lying vacant under respondent/M.P.E.B. Therefore, it was a case of arbitrary termination of his re-employment by respondent/M.P.E.B. and the action was violative of Articles 14 and 16 of the Constitution. The condition of his re-employment to be terminated on one month's notice is also challenged on the ground that it excludes the requirement of reasons for action taken.

Respondents have justified the action on the short ground that in specific terms the petitioner was re-employed "for a period of one year" with the specific condition that on one month's notice on either side, the contract could be terminated. It is also contended that the Service Regulations framed u/s 70(c) of Electricity Supply Act, 1948 for short "Act" of the Board made no provision expressly for "re-employment" and the petitioner was appointed on "Special Contract" as contemplated under the Regulations. It is averred that the Board decided to adopt the policy-decision of the State Government restricting "re-employment" of retired Government servants which was communicated to it on 30-5-1990 vide Annexure R/1. It is also averred that no retired person has been called for interview to fill up any post of Vigilance Inspector thereafter and that before petitioner was re-employed he was interviewed, but before 30-5-1990. The allegation that the respondent/M.P.E.B. acted arbitrarily or out of malice or oblique motive is denied and it is averred specifically that all the 14 Vigilance Inspectors who had been "re-employed" received the same treatment as the petitioner inasmuch as services of all of them had been terminated simultaneously for the same reason.

One of the learned Judges (S.K. Dubey, J.) took the view that "during the tenure of one year" contemplated under his order of re-employment, the services of the petitioner could not be terminated on one month's notice unless he was found physically and mentally unfit or continuation of the employment of the petitioner was against the interest of respondent/M.P.E.B. or he had committed any act of misconduct. For that view, reliance was placed on two decisions of the Apex Court, Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, It was further held that the appointment order did not contain any term that the tenure of Office would be subject to any direction issued by the State Government u/s 78A of the Act and, therefore, the premature termination of contract of re-employment was invalid. For that proposition, reference was made to the case of State of Uttar Pradesh and Others Vs. Ex-pilot Officer Arun Govil, Having taken that view, he held that the petitioner was entitled to salary for the unexpired period of the contract of employment (Annexure P/1), obviously because he could not be continued in service as the period had expired during the pendency of the petition.

The other learned Judge (R.C. Lahoti, J.), on the other hand, took the view that the petitioner had no case and he was not entitled to any relief because he was not victim of any hostile discrimination and indeed, his re-employment was terminated in keeping with the policy-decision of the State Government (Annexure R/1) which was binding on the respondent/M.P.E.B. In virtue of his "re-employment", the petitioner was not guaranteed of any fixed tenure of service either constitutionally or statutorily and rightly his re-employment was terminated as that was a contractual appointment and that was done in accordance with the agreed terms of the contract between the parties. In reaching the conclusions, he referred to and relied on Regulations 5 and 10 of the respondent/M.P.E.B., made u/s 79(c) of the Act and huge mass of case-law. He also expressed the view that Section 2(oo) of the Industrial Disputes Act, 1947, would not come to the rescue of the petitioner, relying on Apex Court's decision in Binoy Kumar Chatterjee Vs. Jugantar Limited and Others,

In my opinion, for resolution of the controversy, I am required mainly to examine two questions. What is the scope of petitioner's "re-employment" in terms of Annexure P/1? Whether his services are validly discontinued in terms of the order, Annexure P/3? Both questions, however, are intertwined and inter-related and cannot be dealt with separately. As I have pointed out above, S.K. Dubey, J. allowed the petition on the short and simple ground that the petitioner had a vested right to continue in employment "during the tenure of one year" and, therefore, on the grounds enumerated by him only; his services could be terminated within that period on service of one month's notice. Lahoti, J. dismissed the petition taking the view that when a Government servant is retained in service beyond the period of superannuation, he is not vested with any right to continue in service for any specified period and the Government has a discretion to allow him to continue or not, but the discretion must not contravene any law and must not be guided by any ulterior motive. For that view, he cited; State of Assam v. Pramadhar Baruah AIR 1970 SC 1341, State of Assam and Another, etc. Vs. Basanta Kumar Das, etc. etc., and Vaish Degree College v. Lakshmi AIR 1986 SC 888, etc. etc.

Respondent/M.P.E.B. is a creature of Statute though, admittedly, it is an "Authority" also within the meaning of the term included in the definition of the word "State" in Article 12 of the Constitution. The scheme of the Act clearly indicates that there is a role, separately assigned to the Central Government, State Government, State Electricity Board and the Central Electricity Authority for performing variously the functions earmarked for them under the Act. What also equally clear is that a State Electricity Board and the Central Electricity Authority defined respectively in Clauses (2) and (1) of Section 2 of the Act are meant to function as autonomous bodies within the specified spheres of their activities. The "Authority" is constituted u/s 3 and the "Board" u/s 5 of the Act to achieve the object of "rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical development". u/s 5, each State Government constitutes a separate State Electricity Board, but u/s 10(5),

the Chairman and Members of the Board can be removed, "if the Board fails to carry out its functions or refuses to follow the directions issued by the State Government". Section 12 makes the Board a body corporate having perpetual succession with power to acquire and hold property. It is not necessary to refer to other provisions of the Act except to indicate briefly that chapter IV of the Act deals with provisions concerning powers and duties of the Board and in Chapter V as also elsewhere certain functions and duties of the "Authority" are specified. Section 27 makes it clear however that the Boards shall "have such further powers and duties as are provided in the Act".

Section 15 empowers the Board to appoint a Secretary (subject to approval of the State Government in his case) and other officers and employees as may be required "to enable the Board to carry out its functions under the Act". Section 79 invests however in the Board to "make Regulations not inconsistent with this Act and the Rules made thereunder" to provide, inter alia, for as per Clause (c), matters concerning the duties of officers and other employees of the Board and their salaries, allowances and other conditions of service. Section 78A is as follows :--

"78A. Directions by the State Government. -- (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the authority whose decision thereon shall be final".

Regulation 5(iii), framed by the Board is as follows : --

"5. Method of appointment. -

(i) and (ii).....

(iii) appointment on Special contract. -

The Board may appoint any person or persons on special contract on such terms and conditions as it may deem necessary and in such cases, these Regulations shall apply to such person or persons to the extent they are not inconsistent with the said terms and conditions".

I quote also Regulation 10 :

"10. Termination of service. -

(a) Unless otherwise specified in the appointment order in any particular case, he service of a servant of the Board may be terminated without notice.

(i) during the period of probation or on its completion and without assigning any reasons therefor;

(ii) as a result of disciplinary action.

(b) Where the services of the servant of the Board governed by special conditions are terminated the Board may give pay in lieu of notice for the period by which the notice period falls short".

The order of petitioner's re-employment, as per Annexure P/1, was passed under Regulation 6(iii) which conferred on the respondent/M.P.E.B. the authority to lay down the terms and conditions in the "special contract" when "re-employing" him as a Vigilance Inspector derived from Sections 15 and 79(c). Although "period of one year" was specified in para 1 of Annexure P/1 that was not meant to carry the guarantee of petitioner being continued in service for that period because clearly and categorically, para 2 made the re-employment subject to the terms and conditions specified therein. The appointment of the petitioner was not made expressly in a "tenure Post" as defined in F.R. 30-A; only a Government servant holding a "permanent post" can claim thereunder to hold a "tenure post" for the limited period specified for such a post. Indeed, it is not the petitioner's case that Vigilance Inspector's post was a "tenure post" under the relevant Service Regulations of respondent/MP.EB. Nothing from the "Act" or the "Rules" or the "Regulations" has been shown to establish that any of the terms specified in Annexure P/1 was ultra vires. It is, therefore, this Court's duty to read the document as a whole applying the established norms of interpretation. Petitioner's entitlement, I am obliged to conclude, is dependent on the cumulative effect of several terms and conditions of his "re-employment" enumerated in para 2 of the document because para 1 is not to be read in isolation as that is expressly subjected to para 2.

Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State is contemplated under Article 16(1) of the Constitution but I do not think if any complaint of denial of equal opportunity can be made by a citizen who availed the opportunity and served the State until the age of superannuation. As stated by Apex Court, per Chinnappa Reddy, J. in State of Maharashtra Vs. Chandrabhan Tale, "public employment opportunity is national wealth in which all citizens are equally entitled to share and that no class of people can monopolise public employment". Persons who are "re-employed" form a class by themselves and a person belonging to this class can only invoke Article 14 of the Constitution in case of hostile discrimination and any arbitrary action concerning his contractual appointment. This Court's D. B. decision, Shri Prakash Mishra Vs. Sports Authority of India, dealt with a probationer's right to continue in public employment and applied tests envisaged under Articles 14, 16 and 21 to his case and observed that for considering if reasonable procedure was followed to discontinue the services of any citizen the scope and purport of the appointment and the rights secured in that respect are to be examined with reference to the order of appointment in the context of relevant Service Rules.

The fate of the petitioner hinges on a proper construction of the order of his appointment, annexure P/1, because that contract has the statutory sanction of

Regulation 5(iii). It is difficult to read the several conditions enumerated in para 2 as mutually exclusive. I do not think if the period of one year specified in the Order can be treated as probationary period in terms of Sub-clause (vi) of para 2 because purport of that provision is entirely different. His appointment was meant to be subjected to his producing a medical certificate to test his eligibility on the basis of his physical and mental fitness. That was merely a threshold requirement and was not meant to enure during the course of his re-employment. I am also of the view that Sub-clauses (v) and (vi) of para 2 and the 1st para are to be read together whereupon it would be clear that Sub-clause (vii) simply meant that notwithstanding the period of one year being specified in para 1, on attaining the age of 60 years, the appointment shall ipso facto cease to be effective and the appointee would have no right to claim extension though the respondent/M.P.E.B. may, in exceptional cases, grant that. The provision for one month's notice or one month's salary, I would regard to be reasonable and sufficient to take care of Article 21 inasmuch as for service rendered on re-employment, the petitioner could draw his salary minus pension and on cessation of his re-employment, he would revert to the position prior to his re-employment; he would not be destituted or starved as he would continue to draw pension and would be able to seek other avenues to augment his income.

Brojo Nath Ganguly (*supra*), was not a re-employed person; the Court held invalid Rule 9(i) of the relevant Rules framed by employer authorising it to terminate on three months' notice the employment of a "permanent employee" without assigning any reason. That Rule was held ultra vires Section 23, Contract Act being a "hire and fire" rule comparable to "Henry VIII clause". The Court held that the provision was "harmful and injurious to the public interest for it tend(ed) to create insecurity in the minds of those to whom it applied". It was declared void on the ground of being "opposed to public policy". The Rule was, indeed, held "unconscionable" because of "gross inequality of bargaining power between the employer and the worker". That situation obviously does not arise here. Similarly, in my view, D.T.C. Mazdoor Congress" case (*supra*) also has no application to the facts of this case. In that case as well, the question was of validity of a similar Regulation of the employer terminating similarly the services of a "permanent employee" which was held void. The validity of the relevant Regulation 9(b) was tested on the anvil of Section 23 of the Contract Act and Article 14 of the Constitution. It was held void because it conferred power on the employer to terminate the services of a "permanent and confirmed employee" by issuing a notice without assigning any reason and without giving any opportunity of hearing to the employee.

Is the "special contract" of re-employment contemplated under Annexure P/1 read with the relevant Service Regulations, opposed to public policy and hit by Section 23, Contract Act? That is the first question. The contract obviously does not suffer from vagueness or uncertainty as was the case of Regulations impugned in Brojo Nath Ganguly or D.T.C. Mazdoor Congress, both *supra*. The employee knew beforehand that he would have a temporary tenure and was not

being encadred. His "re-employment" for one year was terminable on one month's notice on either side or on payment of one month's salary. He knew that his employer was a statutory body and he was subjected, in terms of Clause (i) of para 2 of the Contract (Annexure P/1), to the Regulations framed under the statutory enactment creating his employer. The provisions of the Act and the Regulations bind him and his employer equally for that reason. There is no scope for his complaining of "Constitutional prejudice" based on either Article 16 or 21. He is not losing an "employment" as he was "re-employed" conditionally and temporarily. On his services being discontinued by notice, he would be continuing to receive thereafter the pension and the question only would be of loss of additional earning. That cannot be related to either "public purpose" or "public good" or "public interest" to sustain a grievance of social injustice. For an egalitarian social order, the Constitutional requirement is of equitable sharing in public employment of all able-bodied and qualified persons.

Whether the petitioner is a victim of any arbitrary action of his employer/M.P.E.B. is the second question. It is true that no other reason is given in the Order/ Notice terminating his "re-employment" except stating that action was taken under Clause (v) of para 2 of the contract of re-employment. Whether, indeed, any other reason was at all required to be stated is the moot question. That may be answered by referring to Regulations 5 and 10(b). Authority being conferred on the employer/M.P.E.B. to act in that manner, it cannot be said that the respondent acted arbitrarily in terminating the re-employment of the petitioner exercising authority conferred in that regard in terms of Clause (v) of the "Special Contract" by terminating the re-employment on one month's notice. There is no requirement of giving any other reason contemplated in Regulation 10(b).

However, it is contended that more cogent reason should have been forthcoming because the re-employment was terminated within one year's period specified in the first para of the appointment order. To discharge its constitutional obligation in terms of the decision in D.S. Nakara and Others Vs. Union of India (UOI), to meet the grievance of arbitrary action, respondent/M.P.E.B. has placed on record material to satisfy the Court that it has not acted arbitrarily and it was not actuated by any malice or oblique motive in doing so. It is disclosed in the return that in all 14 retired police personnel were re-employed as Vigilance Inspectors and the appointment of each of them has been terminated on receipt of a communication from the State Government. That is Annexure R/1 and is dated 25-5-1990, manifesting the policy decision of the State Government to the effect that in Public Sector Undertakings connected with it, no re-employed or retired Government servant shall be continued beyond 30-6-1990. In the instant case, petitioner's appointment was made obviously prior to receipt of that communication and his re-employment was terminated after receipt thereof.

Section 78A empowers the Government to lay down guidelines when any "question of policy" arises and the State Electricity Board may accept the same

or raise "dispute" in regard thereto. The guidelines obviously are not binding on the Board and it may raise "dispute", but when that is decided by the Central Electricity Authority, as contemplated under Sub-Section (2), the decision of the said authority would be binding on it. The expression "guided by such direction on the question of policy", used in Sub-section (1) can have no other meaning. As an autonomous body, discretion is vested in the Board to accept the guidelines or to raise a "dispute" in regard thereto for final decision of the concerned "Authority". In the instant case, the respondent/M.P.E.B. has not raised any "dispute" and has rather accepted the policy-guidelines of the State Government manifested in Annexure R/1, as admitted in its Return. Reliance, therefore, of Shri Arun Mishra on Apex Court's decision in Rakesh Ranjan Verma, 1992 AIR SCW 1228 is obviously inappropriate. In that case, Government decision was disputed by the Board and the Court further held that the decision in question was not a "policy decision". It was observed that the power contemplated u/s 78A is not meant to be exercised by the State Government for directing any particular individual or group of persons to be appointed as officers of the Board because that results in impingement on Board's autonomous status and its statutory power to appoint suitable staff for any particular post.

What matter can be a "question of policy" and what not, is itself a ticklish question which cannot be answered in absolute terms, because when statutory authority is expressed in regard to any matter the relationship inter se of the decision maker and the body for whose guidance the decision is taken depend on the scope of their respective functions and spheres of activities. In Black's Law Dictionary, 5th Edn., the meaning of the word "policy" is given as "the general principles by which a Government is guided in its management of public affairs". It is also stated that the term "policy" as applied, inter alia, to a "course of action", refers to "its probable effect, tendency or object, considered with reference to social or political well being of the State". In Webster's New International Dictionary, Second Edition, the word "policy", is said to mean, inter alia, "a settled or definite course of method adopted and followed by Government, institution, body or individual"; as also "prudence or wisdom in the management of public and private affairs". In the light of these affirmations and in the context of provisions of Sections 5, 10(5), 15, 27 and 79(c) of the Act, it is to be decided, indeed, if in terms of Section 78A, it can be said that the Government directive contained in Annexure R/1 is in relation to a "question of policy". It appears to me clear that despite its autonomous status, control on the affairs of the State Electricity Board of the State Government is retained in terms of Sections 10(5), 15 and 27 by subordinating norms of executing its "functions" by the Board to the directive contemplated u/s 78A. When, therefore, there is no express provision in the Service Regulations framed by the Board u/s 79(c) in respect of any particular matter concerning "conditions of service" of the employees of the Board, any direction issued u/s 78A in relation thereto would be within the realm of course of action settled or made definite thereby to be followed by the Board in relation to its employees generally. What would be the

prudent course of action as would subserve the social and political well-being of the State in regard to any matter concerning employment on which Service Regulations are silent, can be a "question of policy" u/s 78A. As the Service Regulations of the respondent/M.P.E.B. contain no express provisions concerning re-employment of retired Government servants, the directive contemplated in that regard in Annexure R/1 comes within the purview of Section 78A and that position, the respondent/M.P.E.B. has itself accepted and has not disputed in terms of Sub-section (2).

Reliance, Shri Arun Mishra placed also on this Court's decision of Indore Bench in Deepak Kumar's case 1991 RN 204 which was a case of a regular employee of a Co-operative Bank. He was ordered to be reinstated because the Bank was found to have acted arbitrarily in terminating his services, violating the relevant Service Rules. Arun Govil's case (supra), cited in his order by my learned Brother, S. K. Dubey, J. is obviously distinguishable on facts. On the other hand, that supports the view I have taken that in such a case, the moot question is one of construction of the order of appointment. In that case, the contract was construed in terms of Article 311 of the Constitution. The contract between the State of Uttar Pradesh and the petitioner did not contain a term similar to one of Clause (i) of para 2 of Annexure P/1. It was a simple assignment and one Year's period was specified though it was also stipulated that the contract was liable to termination on one month's notice. State Government having exercised its statutory power in the instant case u/s 78A within the four corners of the contract, Annexure P/1, between the instant petitioner and his employer. There is no scope for the petitioner to complain against his employer's bona fide exercise. Statutory mandates always operate automatically. That is axiomatic. I have found it difficult to subscribe to the view that it should have been expressly made a condition of re-employment among other conditions enumerated in Annexure P/1 that the Contract would also be subject to State Government's possible directives u/s 78A; the "duty" contemplated u/s 27 is the motive power of the mandate.

I am, therefore, of the view that the respondent/M.P.E.B. having given a sound, valid and cogent reason for the action taken, it is difficult to strike down the order/notice, Annexure P/3, by which the services of the petitioner have been terminated. As against the petitioner the respondent/M.P.E.B. has not acted in any manner unjustly or arbitrarily and he has been given the same treatment as given to others similarly re-employed as Vigilance Inspectors. Indeed, it is not also established, as complained in the Writ Petition, that any person by the name of Hari Singh Sharma or even any other person has been appointed in any vacant post of Vigilance Inspector even after the respondent/MP.E.B. decided that a retired Government employee shall not be taken in re-employment or continued in the re-employment.

For all the aforesaid reasons, I conclude that the petitioner has not made out any case for any relief to be granted by this Court in exercise of this Court's Writ

jurisdiction. His services, I have already held above, are validly terminated under notice/order, Annexure P/3 and the action of the respondent/M.P.E.B. is not impugnable either on the ground of violation of any of the terms and conditions of his appointment order, Annexure P/1, or on the ground that the order is arbitrary order, not based on sound reasons and, therefore, violative of Article 14 of the Constitution. The petition is dismissed, but there shall be no order as to costs of this petition.