

(1995) 12 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A.T. No. 2197 of 1987

Bridge and Roof Co. (India) Ltd.

APPELLANT

Vs

K.K. Mazumdar and Others

RESPONDENT

Date of Decision : 21-12-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 309, 310

Contract Act, 1872 — Section 23

Road Transport Corporations Act, 1950 — Section 53

Citation : (1996) 2 CALLT 269

Hon'ble Judges : Surya Kumar Tiwari, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : Tapas Banerjee and Mr. Arunava Sengupta in F.M.A.T. No. 2197 of 1987, for the Appellant; Swapan Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—These two appeals have been filed against the Judgment and order dated 20th July, 1987, passed by B.C. Banerjee, J., in C.R. No. 13874(W) of 1985.

2. The writ petition was filed by the respondent against the order dated 20th September, 1985, issued by the Chairman and the Managing Director of Bridge & Roof Co. (India) Ltd. (a Govt. of Indian Enterprise), informing the writ petitioner/ opposite party, Sri K.K. Mazumdar, that in accordance with the instruction received from the Ministry of Petroleum, the Chairman & Managing Director relieved him of the duties as Director (Finance) of the said Company with immediate effect. The writ petitioner was directed to hand over the charge to the Chairman and the Managing Director immediately. By the said letter, the other benefits which the writ petitioner was enjoying were all withdrawn. This order dated 20th September 1985 was set aside by the learned Trial Judge by the order dated 20 July, 1987, and the appellants were directed to reinstate the writ petitioner/ opposite party, with immediate effect. It was further held by the

learned Trial Judge that the writ petitioner/opposite party should be deemed to be in continuous employment since 20th September, 1985, till the date of delivery of the said judgment.

3. During the pendency of this appeal, the writ petitioner/opposite party had attained the age of superannuation of 31 July, 1987, The facts of this case are as follows :-

4. The writ petitioner/opposite party was appointed as an income tax Officer, Class-I in the Indian Revenue Service on 1st February, 1954, and ultimately he was promoted to the post of Commissioner of income tax and attained the age of superannuation on 31st July, 1987 i.e. after the writ application was disposed of.

5. The Bureau of Enterprises under the Ministry of Finance was Constituted in the year 1965. The functions of the said Bureau was to formulate personnel policies in public undertaking and in 1974, by notification in the Gazette of India, extraordinarily the Government of India Constituted a public Enterprises Selection Board with functions including inter alia, appointments to board level posts. Between 5th October, 1975, and 19th September 1978, the Government of India, Ministry of Finance, through the Bureau of Public Enterprises and the Public Enterprises Selection Board, issued instructions and laid down certain guidelines regulating the appointments to top posts in public sector undertaking by issuing circulars from the time to time. The said circulars specifically stipulated that -

(a) A Government servant coming on permanent absorption under Public undertaking sector, should be on contract for a period of five years or till the date of superannuation, which was earlier.

(b) At the end of first year, the performance should be revived so that those Government Officers who did not fit into the Public Sector services, should be sent back.

In June 1982, the writ petitioner/opposite party was called for interview by the Public Enterprises Selection Board for the post of Director (Finance), under Bridge & Roof Co. (India) Ltd.

6. On 2nd August, 1982, the Ministry of Petroleum, Chemicals & Fertilizers (Department of Petroleum), informed the writ petitioner, who was then the Accounts Officer, Tea Trading Corporation of India Limited, that the public enterprises Selection Board had recommended his name for the post of Director (Finance), Bridge & Roof Co. Ltd. in Schedule "C" Scale of pay of Rs. 2500-3000. In the said letter it was further stated that "you may kindly let us know whether you are willing to be absorbed on a permanent basis in the Company so as to enable tire Ministry to take further action on your appointment as F.D.B & F).

7. By the confidential Memo. dated 2.9.1982, the Under Secretary to the Government of India, Department of Petroleum, informed the Director, Central Board of Director Taxes, the Ministry of Finance that the "the B.E.S.B. while

making the above recommendation, have noted that Sri Mazumdar has already been on deputation to public enterprises and as such he may have to exercise his option on a second deputation. It has accordingly been recommended that Sri Mazumdar may be considered for appointment on the basis of the permanent absorption in the

8. It is, further therefore, requested that confirmation from Sri Mazumdar as to his willingness for permanent absorption in the Company, may kindly be expedited to enable this Ministry to take further necessary action".

9. In the Government order dated 5th October, 1974, it was specifically pointed out that -

As the Ministry of Heavy Industry etc. are aware, the general policy of Government is to give persons appointed to top posts a tenure of 5 years or upto the date of superannuation, whichever is less, subject to satisfactory performance. It is necessary to decide the tenure of all appointments to top post in terms of this policy and indicate it precisely in the appointment orders.

10. In the Government order dated 1st May, 1975, It is provided that-

At the Ministries in administrative control of Public Enterprises are aware, the existing orders envisage that Government officers on deputation to Public Enterprises are required to exercise an option either to be permanently absorbed in the enterprises where they are employed or revert to their parent orders within two years in the case of those, who are of those, who are in the scale of pay of Rs. 2500-3000 and above and within three years in the case of those on lower scales of pay.

11. By the letter dated 31st August. 1982 the writ petitioner/opposite party expressed his willingness to get absorbed in Bridge & Roof Co. Ltd. on permanent, basis. The said letter dated 31st August 1982, reads as follows:

This is to inform you that I am willing to get absorbed in Bridge & Roof Co. Ltd on a permanent basis and an exercising my option now itself to do so. However, such absorption should be in terms of B.P.E. guidelines covering all Government officials getting absorbed in the Public Sector so that I do not lose my absorption and retirement benefits.

I assume that my absorption would enable me to continue in service upto the normal age of superannuation as under Government. This would mean that I will be retained in service at least till I attain the age of 58 years i.e. 1.8.1987.

Kindly note that I am no longer the FA & CAO of Tea Trading Corporation of India Ltd.

I shall be grateful if all communication to me is addressed of my residence.

12. On 11th March, 1983, the writ petitioner's service was placed at the disposal of the Ministry of energy for appointment as a Director (Finance) in Bridge & Roof

Co. Ltd. the said order was passed by the Ministry of Finance, Department of Revenue, Government of India, The said order was as follows :-

On his selection for appointment as Director (Finance) in the Bridge & Roof Co. (India) Limited, Calcutta, the services of Shri K.K. Mazumdar, Commissioner of income tax (Appeals) XIV Calcutta, are hereby placed at the disposal of the Ministry of Energy (Department of Petroleum). New Delhi, with effect from the date he takes over charge of his own post.

2. The appointment of Shri Mazumdar will be in the scales of pay of Rs. 3500-4000 on immediate absorption basis and for a period of two years in the first instance.

13. By the letter dated 20 September 1987, the Under-Secretary, Government of India, informed the Managing Director of the Bridge & Roof Co. Ltd. that-

I am directed to refer to this Ministry's order of even number dt. the 11th March 1982, and to convey the sanction of the President to the permanent absorption of Shri K.K. Mazumdar. Commissioner of income tax. Level-II, as Director (Finance), in the Bridge & Roof Co. (India) Ltd.. Calcutta, with effect from the date indicated below, on the following terms and conditions.

(1) The permanent absorption shall take place from the afternoon of 31st March, 1983

(vi) On his permanent absorption to Bridge & Roof Co. (India) Ltd., Shri Mazumdar's family will be eligible for family pension subject to the provisions of Rule 54 of CCS (Pension) Rules, 1972, and any other orders issued by Government from time to time, provided he is not covered by any other family pension scheme applicable to Bridge & Roof Co. (India) Ltd. staff....

14. By the letter dated 30th November 1993, the Secretary of the appellant Bridge & Roof Co. Ltd. was informed by the Under-Secretary to the Government of India, Ministry of Energy, Department of Petroleum, that-

I am directed to convey the sanction of the President of India to the appointment of Shri K.K. Mazumdar as Director (Finance) of Bridge & Roof Co. (India) Ltd. on the following terms and conditions.

(1) Period The tenure of his appointment will be initially for a period of two years from the date he assume the office of Director (Finance) which he terminable by either side with three months' notice or on payment by the Company of three months' salary in lieu thereof, without assigning any reason

15. Accordingly, on 1st April 1983, the writ petitioner joined his new assignment as Director (Finance) of the appellant Company.

16. On 2nd March 1984, the Department of Petroleum nominated the writ petitioner to the Board of Directors for the years 1984-85. It is stated that this was done apparently on review of the performance of the first year 1983-84; in

terms of the Government of India's instructions issued in this behalf. But finding it difficult for the writ petitioner to remain in Bridge & Roof Co. Ltd; the writ petitioner Opposite Party made a representation to the Central Board of Direct Taxes for reversion to his parent Department on the ground that the terms of appointment including the purported tenure of two years and non-acceptance of resignation as communicated by the letter dated 30.11.1983, were highly arbitrary leading to insecurity in service and was contradictory to the principles of permanent absorption to which the President of India has conveyed his sanction in his order dated 30th September 1983. Such prayer for repatriation was rejected without assigning any reason whatsoever.

17. In September 1984, the writ petitioner's name appeared at serial No. 61 of the list of Commissioners of income tax, Level-II. vide Civil List of Indian Revenue Services (income tax) as on 1.1.1984, published by the Ministry of Finance, Department of Revenue. On 13th December 1984, the Chairman and the Managing Director of the Bridge & Roof Co. Ltd. wrote to the Secretary, Department of Petroleum, recommending that-

(a) The writ petitioner's service with the Company should not be continued beyond the initial period of two years ending on 31.3.1985; and

(b) Recommending that the writ petitioner should be sent back to the income tax Department which was his parent department.

18. By the letter dated 14th December, 1984, the writ petitioner was informed that the request of the writ petitioner for reversion to the parent Department could not be acceded to at that stage. In February 1985, the then Secretary, Department of Petroleum, in his capacity as Reviewing officer, disagreed with the adverse views expressed against the writ petitioner by the Chairman and Managing Director of the said Company and found that the writ petitioner was quite adequate for the job. On 22nd March 1985, on reference made by the Department of Petroleum to Public Enterprises Selection Board for advice regarding continuation of the writ petitioner in the company beyond the said initial period of two years, the said Public Enterprises Selection Board recommended that the then Secretary, Department of Petroleum, personally evaluated the performance of the writ petitioner in order to decide whether the petitioner should continue with the Company till the date of his superannuation. But the evaluation as above was directed to be made within three months.

19. On 25th March 1985, the petitioner wrote to the Central Board of Direct Taxes stating that his employment with Bridge & Roof Co. Ltd. was likely to be terminated with effect from 1.4.1985 or soon thereafter, i.e. more than two years before the date of his normal superannuation and no reason had been given for such arbitrary discontinuance when his service was placed at the disposal of the Ministry of Petroleum on permanent absorption basis vide the order of the President of India, dated 30th September 1983, and in that circumstances, the petitioner requested that an order may be passed repatriating the writ petitioner

back to the income tax Department as Commissioner of Income -Tax, Calcutta.

20. The period of two years, when the services of the writ petitioner was placed in the first Instance by the Ministry of Finance at the disposal of tile Ministry of Petroleum, expired on 31st March 1985. By the letter dated 3rd May, 1985, the Ministry allowed the writ petitioner to continue till final decision regarding renewal was communicated. It is stated that at the meeting of the Board of Directors of the Company at Delhi, the Chairman and Managing Director Informed the members that he was verbally informed that the services of the petitioner should be continued till 30.6.1985.

21. On 13th June, 1985, the Board wrote to the Ministry of Petroleum asking for repatriation of the petitioner to his parent Department in case it was decided not to continue his service with the Company till his attaining the age of superannuation. The Board also informed the Ministry of Petroleum that the writ petitioner's retirement benefits had not been drawn by him from the Government and as such the period spent by him on duty with the Company should be treated as the period spent on deputation. On 14th June, 1985, the writ petitioner made representation to the Secretary. Department of Petroleum, praying for issuance of formal orders continuing his service with the Company till the date of his superannuation. By the letter dated 19th June, 1985, the Secretary, Ministry of Petroleum, stated that if no communication was received by 28th June, 1985, it would be presumed that the Ministry desired the writ petitioner to hand over the charge and to be relieved. By the letter dated 24th June. 1985, the Ministry of Energy informed the Chairman of the Company that the writ petitioner might continue as Director till further communication was received.

22. On 19th September 1985, the Ministry concerned, by the letter addressed to the Chairman and tile Managing Director of the Company, said that the Government had not approved the extension of tile writ petitioner's service beyond 31st March, 1985, and on 20th September 1985, the writ petitioner was served with the order terminating his service without giving him any opportunity of hearing.

23. The writ petitioner moved this writ Court and by the order dated 23rd September 1985, the learned Trial Judge, inter alia, directed that no further effect to be given to the letter of termination of service and ultimately on affidavits and on hearing the parties at length, the learned Trial Judge was pleased to set aside the said order terminating the petitioners service by the letter dated 19th September 1985, and the petitioner was directed to attend the office on 27th July 1987, but he was permitted to attend the office on 31st July 1987, being the date of his superannuation.

24. The case of the petitioner/opposite party before the learned Trial Judge shortly was that while he was serving as the Commissioner of income tax. Calcutta, he was selected by the public Enterprises Selection Board in June 1982,

for the post of Director (Finance) of Bridge & Roof Co. Ltd., and by the letter dated 2nd August, 1982, the Ministry of Energy informed him that he had been recommended for the post and the Ministry desired to know whether he was willing to be absorbed on permanent post in the Company and that relying on such clear and positive representation, he had exercised option for permanent absorption in the said Company as a Director (Finance). The relevant decisions of the Government of India in this behalf under various circulars were that all persons appointed to top posts on permanent absorption basis should normally be appointed for five years contract or till the age of superannuation, which was earlier, and that on the basis of this state of affairs and the representation, accepted the post on "permanent absorption basis". The writ petitioner joined at a point of time when he had less than five years for attaining the age of superannuation. So, in view of the decisions of the Government of India, the writ petitioner's service should be and would come to an end under the said Company on attaining the age of superannuation, as decision of the Government of India that such posting should be made for five years of the date of superannuation, which was earlier. In this case, the date of superannuation was earlier than the period of five years.

25. The petitioner further stated that the further case of the petitioner was that he was holding the civil post under the Government of India and he was last posted as the Commissioner of income tax, Calcutta, Such a permanent post which was a civil post within the meaning of Article 310 of the Constitution, could not be taken away by this procedure which was unwarranted and on the face of it illegal, arbitrary and mala fide.

26. It was further submitted that he was sent on permanent absorption in the service of the Bridge & Roof Co. (India) Ltd., and thereafter unilaterally, contrary to the decision of Government of India, it was evident from the relevant circulars and decisions and contrary to initial decisions taken in this behalf, which was relied on by the writ petitioner, the petitioner had exercised option and that after exercising his option for permanent absorption, the said permanent absorption which is to continue for a period of five years or the date of retirement which was earlier, could not be converted into a temporary service period for a period of two years. This was nothing but a fraud.

27. Further case of the writ petitioner was that within the period of two years, he sought repatriation which was refused without assigning any reason whatsoever, and accordingly, It was submitted that the writ petitioner, who was holder of a permanent Civil post and sent on deputation and when his services were placed at the disposal of the said company on the clear understanding and on clear decision and understanding that the same was for a permanent absorption. The service of the writ petitioner could not be terminated in such unceremonious, unwarranted and arbitrary manner. On the contrary, it is a case of the appellant/respondent that his service was placed to the Bridge & Roof Co.(India) Ltd. initially for a period of two years only and after the expiry of the two years he

had no right to continue and accordingly the Government of India did not agree for extension of his service under the Board and accordingly the Board had no option but to terminate his service.

28. It was the further case of the appellant before the learned Trial Judge that under the terms of appointment, which was initially for a period of two years from the date of the assuming the office, could be terminated by either side with three months notice or on payment by the Company with three months salary in lieu thereof without assigning any reason and that the said appointment of the Writ Petitioner expired on 31st March 1985, but however, the Company was directed to allow the writ petitioner to continue until further was communicated and it was on the receipt of a final decisions of the Government of India, his services had to be terminated.

29. It is further submitted that the employment of the petitioner under the Bridge & Roof Co. (India) Limited was under a contract of service and that such contractual obligation, and that when a contractual service was terminated in terms of the contract, the Writ Court had no jurisdiction to interfere.

30. The learned Trial Judge considered the facts of the case extensively and had taken great pain in analysing those facts. The learned Trial Judge had held that the Presidential order and assent and other correspondence unmistakably goes to suggest that the respondent/writ petitioner's appointment was initially for a period of two years, which cannot but mean to begin with and it cannot, by any stretch, be limited to two years only.

31. It was further observed that by the letter dated 31st August, 1982, the Petitioner, in no uncertain terms, pointed out that the permanent absorption of the writ petitioner should be according to the terms of the Bureau of Public Enterprises or the Public Enterprises Selection Board guidelines which regulate the procedures and policies to be followed in the matter of appointment to the top posts in the public sector enterprises. The approval of the appointment of the writ petitioner as Director (Finance) of the Company, dated 10 November, 1982, also contained that the writ petitioner's case should be reviewed by the Government of the end of the first year of appointment which was in line with the guidelines of the Bureau of Public Enterprises.

32. It was held by the learned Trial Judge that the writ petitioner was asked to exercise his option as regards the permanent absorption and after the exercise for option for permanent absorption, it is only nature to consider that the petitioner would be occupying the post until the petitioner attains the age of superannuation.

33. Ultimately, the learned Trial Judge held chat in the facts and in the circumstances of the case and in the principle laid down by the Supreme Court in this behalf, the writ petitioner's service could not be terminated in the manner it was sought to be done and that the petitioner should continue in service until he attains the age of superannuation.

34. This case raises a very substantial question as to the fact of the holder of a permanent civil post when sent on deputation for absorption under a public sector undertaking. Admittedly, according to the policies and principles and/or the guidelines laid down in this behalf by the Government of India for such appointment and absorption, it is crystal clear that the holder of a permanent Civil post could be permanently absorbed and if he could not be absorbed, he had right be reverted back to his parent Department it is not the law that when holder of a permanent post under the Government of India is sent on deputation or his service is transferred for permanent absorption and ultimately was not absorbed, can it be said that he has lost the permanent post held under the Government of India by any legal principle when permanent employee of the Government of India is sent on deputation to any public sector undertaking or to any Government Company under the control of the Government, on deputation, after the termination of the deputation period or when the foreign employer do not want to retain the deputations, he has to be reverted back, as a matter of course and as a matter of right to his parent Department and in his parent post. It is not a case where holder of the permanent civil post has tendered his resignation under the Government of India and or taken voluntary retirement from the service of the Government of India and wants to serve under any foreign employer on fresh terms and condition to case the foreign employer does not permanently employ or absorb such an employee, such an employee has no right to come back to his parent employer as the employer-employee relationship between his original employer and the employee had ceased to exist or terminated.

35. In the instant case, there was no cessation of relationship as master and servant and/or employer and the employee relationship by and between the Union of India and the writ petitioner. There are certain known procedures laid down by rules framed under Article 309 of the Constitution for termination of service of a permanent Government employee. The service of a permanent employee can only be terminated by drawing up proceedings and/or in accordance with the provisions and after observing the provisions of Article 311(2) of the Constitution and/or in case of a contract of service, alter the contractual period has come to an end or the same is terminated under a provision of the contract.

36. In the instant case, the petitioner opted for service under the appellant on the clear and unequivocal representation contained by the rules and regulations and/or the policies and the guidelines framed by the Government of India that employees are sent for permanent absorption and for the purpose of ascertaining whether the employee was capable of discharging the functions, provisions are there for annual review, for permanent absorption therein.

37. In the instant case, the order passed in the name of the President of India clearly indicates that the president of India had conveyed sanction only for permanent absorption of the writ petitioner in Bridge & Roof Company Limited.

Such an order, in the facts and circumstances of the case, has clearly brought into play the principles of legitimate expectation and/or promissory estoppel. The encouragement of acquiescence may provide a good foundation of estoppels also.

38. In the instant case, the doctrine of estoppel by representation is applicable in full force, as on the basis of the orders, circulars and/or the policy decisions of the Government of India, the writ petitioner was encouraged and/or induced to opt for permanent absorption under the appellant Company and when the petitioner had opted for such permanent absorption after obtaining sanction from the President of India the petitioner could not be said to have lost his permanent service under the Government of India as well as the service under the appellant on the ground that the initial period of employment for two years had not been extended. Initial period of absorption for two years had expired. If it was known to the writ petitioner that terms and conditions of service under the fate of the appellant was uncertain and detrimental to the interest of the writ petitioner, in that event it was not expected the writ petitioner would have accepted it keeping his eye open.

39. It was also a case of inducement made to the writ petitioner by the authorities concerned in the facts and circumstances of the case. The inducement concerns itself with;

(a) the actual effect of the representation upon the representation; and

(b) The intention, actual or imputed, of the represents to bring about this result.

It is clear that for the purposes of estoppel, no less than for those of an action for misrepresentation, inducement in fact is established by proof that the representation. inducement in fact is established by proof that the representation was made both with the object, and with the result, of inducing the representation to alter his position." (See The Law Relating to Estoppel by representation, by Spencer Bewer and Turner, Third Edition, at page 93, at paragraph 98.)

40. The Supreme Court, in the case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., and in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, held that-

The Court has power to compel performance of obligations imposed by schemes upon the departmental authorities when a person has acted upon representation made in an Export Promotion Scheme on the basis of promissory estoppel.

41. The principles of promissory estoppel was considered in Robertson v. Minister of Pension. (1948) 2 All ER 767.

An Army Officer was injured in December, 1939. His entitlement to pension depended on whether his disability was "attributable to military service". His enquiry of the work office brought the reply "Your case has been duly considered and your disability has been accepted as attributable to military service." The

Army Officer on the faith of the letter did not taken the steps he would otherwise have taken to get independent medical opinion. Entitlement to pension in respect of injuries suffered after September 1939 should in fact have been dealt with by the Minister of Pension. That Minister later decided that the Army Officer's injury was not attributable to military service. The pension Appeal Tribunal upheld the decision and the Army officer appealed on the grounds that the Minister was bound by the war Officer's letter. It was held by Lord Denning, J., That the letter was an the face of it an authorised decision intended to be binding and to be acted on. Army Officer's forbearing to get medical opinion made it binding. As between subjects that was enough. But was the crown be asked bound by Estoppel? Yes" The doctrine the crown is not so bound had been long exploded. But was the Minister of Pension bound by the War Office Letter? Yes; Army Officer reasonably thought that his claim would be dealt with by or through the War Office. The department did not refer him to proper one; they assumed authority over the matter. The War Officer was entitled to assume that War Office has consulted the Minister of Pension. On this point Lord Denning, J. said "in my opinion if a Government Department in its dealing with a subject takes it upon itself to assume authority upon a matter with which it is concerned, he is entitled to rely upon it having the authority which it assumes. He does not know and cannot expect to know the limits to that authority". It was held that War office was bound as it was but as the Agent of the Crown, the Crown was bound and as the Crown was bound so were its other departments. The Minister's Job was to administer royal warrant governing the payment of pensions issued by the Crown so he had to administer it so as to honour assurance given by or on behalf of the Crown.

42. The Supreme Court in the case of Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others, held that the statutory bodies are bound by the representation made by them to their employee upon which the employees acted to their own prejudice.

43. Accordingly, in our view, the principle of promissory estoppel, the doctrine of estoppel by representation, doctrine of inducement had completely debarred the appellant and/or the Union of India to take a stand that as soon as the initial period of two years had elapsed, the petitioner's service with the appellant had automatically come to an end and consequently he had lost his permanent civil post under the Union of India and made jobless.

44. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, the Supreme Court while considering the regulation 9(b) of the Regulation framed u/s 53 of The Road Transport Act, 1950 which provides termination of service of permanent employees on giving simple month's notice or pay in lieu thereof without recording any reason therefore in the order of termination, held that the said regulation confer powers on the authority to terminate the services of permanent and confirmed employees by issuing a notice without assigning any reasons in the order and without giving any opportunity of hearing to the

employee. The order of termination was wholly arbitrary, uncanalised and unrestricted, violating the principles of natural justice as well as Article 14 of the Constitution. The Service Regulations or Rules framed by them are to be decided by the touch a stone of Article 14, Further the procedure prescribed by their rules and regulations must be reasonable and fair and not arbitrary, fanciful and unjust, it was further held that employment under public undertaking is a public employment and a public property. It is not only the undertaking but also the society which is set in the proper and efficient working. Both discipline and devotion are necessary for efficiency to ensure both service condition of those who worked for them must be encouraging, certain and secured and not vague and whimsical with capricious service conditions. Both discipline and devotion are on endangered and efficiency is impaired. The right to life includes right to livelihood. The right to livelihood, therefore, cannot hang on the wishes of individual in authority. The employment is not a bounty from them can it survival be at their mercy. Income in the foundation of many fundamental rights and when work is the sole source of income, right to work became as much fundamental rights can ill afford to be consigned to be a limbo of undefined promise and uncertain obligation, that would be a mockery of them. It was held that both the society and the individual employees, therefore, have an anxious interest in the service condition being well defined and explicit to the extent possible. The arbitrary rules, which are sometimes described as in Honry VIII Rules, can have no place in any service conditions. There is nothing to support the so-called "High Authority" theory undoubtedly weighed with some authorities for some time in the past but its unrealistic pretentious were soon noticed and it was buried without even so much as an ode to it.

45. In *West Bengal State Electricity Board v. Deshbandhu Ghosh*, reported in AIR 1985 SC 522, the Supreme Court considered the effect of Regulation 34 wherein it was provided that "in case of a permanent employee his case may be terminated by serving three months" notice or on payment of salary for the corresponding period in lieu thereof". It was held that Regulation 34 was arbitrary in nature and suffered from the vice of enabling discrimination. The regulation was totally arbitrary and conferred on the Board the power which was capable of vicious discrimination and that it was naked "Hire and Fire" Rule and accordingly the said Rule was struck down and consequently order of termination of service on the strength of a notice under Rule 34 was also set aside. The said clause was held to be Henry VIII clause.

46. In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, appellant Corporation was a Government Company under the Companies Act and the said Corporation was held to be an authority within the meaning of Article 12 of the Constitution of India. The letter of appointment of the respondent employee stipulated that he will be subject to the Rules and Regulations of the Corporation. Rule 9(1) of the Corporation Service Rule provided that the service of permanent employee would be terminated on 3 months" pay plus Dearness Allowance to the employee and that thereafter the

service of the respondent employee was terminated by paying three months' pay. It was held that Clause(1) of Rule 9 was void u/s 23 of the Contract Act as being opposed to public policy and is also ultra vires Article 14 of the Constitution to the extent that it confer upon the Corporation the right to terminate employment of a permanent employee by giving three months' notice in writing or by paying him the notice. Besides being arbitrary and unreasonable it wholly ignores audi alteram partem Rules. It was also violative of Directive Principles contained in Article 39(a) and 41 of the Constitution. It was held that the principle deductible from various precedents is that the Court will not enforce and will, and, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in the contract, entered into between the parties who are not equal in bargaining power. For instance, this principle will apply where the inequality of bargaining power is the result of court departing in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situation in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice or have no meaningful choice but to give his assent to a contract or to sign on the dated line in the prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable or unconscionable a clause in that contract or form or rule may be. They are opposed to public policy and regulation to be adjudged void.

47. The Supreme Court, in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, held that the Constitution of India does not envisage or permit unfairness or unreasonableness to the State action in any sphere of its activity contrary to the professed ideals of the preamble. Exclusion of Article 14 in contractual matters was not permissible in Constitutional scheme.

48. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, it was held that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The observation of Prof De "Smith on the Development of this law in his book *Judicial Review of Administrative Action* at page 540, 4th Edn. which stated that "to be enforced by mandamus public duty does not necessarily have to be one imposed by a statute. It may be sufficient for the duty to have been imposed by charter. Common law, custom or even contract" was approved by the Supreme Court in this case and the Supreme Court further observed that the judicial control of the fast expanding maze of bodies affecting the right of the people should not be put into water tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief

49. According to the well-settled principles, the State is bound to conform to the

standard or laid down by various orders, circulars and notifications in this behalf and they cannot deviate from it without rational basis.

50. In *Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others*, the Supreme Court had held that memorandum issued by the Government might be in nature of administrative instructions not having the force of law, but the State cannot, at its sweet will, depart from it without rational justification. In this connection, it was observed by the Supreme Court that it is now well-settled by the Supreme Court that where it has been observed that if a departure from it is allowed, that would be clearly violative of Articles 14 and 16 of the Constitution of India. The sweep of Articles 14 and 16 is wide and pervasive. These two Articles embody the principles of rationality and they are intended to strike against arbitrary and discriminatory action taken by the State. It was further observed that "where the State Government departs from a principle of seniority laid down by it albeit by administrative instructions and the departure is without any reasons and arbitrary, it would directly infringe the guarantee of equality under Articles 14 and 16".

51. Accordingly, we are of the view that the learned Trial Judge was perfectly right in holding that in view of the principles laid down by the Supreme Court in various case-laws, it is too late in the day to contend that the permanent service of the employee could be terminated by semity, giving three months' notice or pay in lieu of notice. The same of the holder of a permanent post under Union of India and governed by rules framed under Article 309 of the Constitution of India and enjoying constitutional protection under Article 311(2) cannot be terminated in such an arbitrary and malafide manner.

52. We are clearly of the view that the learned Trial Judge was right in setting aside the order of termination of the writ petitioner/opposite party's service in view of the fact that under the relevant orders and circulars issued by the General Government in this behalf. The period of service under the Company should be held to be five years or the date of superannuation, which was earlier. In the instant case, the date of superannuation was earlier than five years and accordingly there is no aspect from the position that the writ petitioner/opposite party had retired from service on attaining the age of superannuation.

53. The opposite party was holding a very high and responsible post under the Government of India and it is against all principles governing the service jurisprudence, to treat his service terminated in a manner which is unwarranted, arbitrary and malafide on the face of it. Further, in the instant case, the termination was not made by the appellant but under instruction received from the Ministry of Petroleum. The service of the respondent/writ petitioner was not terminated under any rules and regulation governing the conditions of his service and further when in the absence of termination of service or cessation of relationship by and between the Union of India and the respondent, the respondent's prayer for repatriation was refused illegally and wrongfully. The question of cessation of relationship by and between the Union of India and the

respondent, if was terminated, in that event, the question of repatriation would not have arisen.

54. It is a case of gross abuse of legal powers by the Union of India which was intended to punish him for nothing and for irrelevant considerations. The respondents had not done anything wrong, but had acted on the basis of the representations made to him and/or the representations that contained in various Government orders and circulars. Accordingly, there was no way and there was no scope for taking action as it has been taken in this matter. The action, on the face of it, was wholly unreasonable, arbitrary and punitive in nature.

55. We are further of the view that when the service of the writ petitioner was not terminated lawfully by the Union of India, in that event, he should have been taken back to the service of the Government of India and the Government of India could not issue instruction to the appellant for relieving him from the duties as Director (Finance) of the appellant. The course of action taken in this behalf has been rightly observed as-

I am afraid, the entire effort seems to be not only an ingenious device to get rid of the person concerned, but a totally arbitrary attitude which the Law Courts cannot stand-by as a mere passive spectator. Law Courts exist to remedy the wrong and if the law Courts do not rise to the occasion, faith and belief in the judiciary would crumble down. Law Courts exist to remedy the wrong and to do so is a plain exercise of judicial power and it ought not to shirk of its responsibility in the matter.

56.1 Public employment is not a bounty and could not be made dependent on the whims and caprice of the authorities. Termination of service does not depend upon the discretion of the public authorities. Even if a discretion is vested in administrative authorities, it is not in fact unfettered power to turn thumbs up and thumbs down. The service of the respondent under the Government of India had not been terminated in accordance with the conditions of service, nor under the conditions of service and the contract of service under which the petitioner had accepted the service under the Bridge & Roof Company Limited, did not authorize the Union of India and/or Bridge & Roof Company Limited, to make such premature termination in service which has resulted in tremendous loss, injury and mental agony to the respondent/writ petitioner at the fag end of his career. He has spent his golden years of life in the service of the Union of India and the appellant, and his service at the fag end of his career has been machinately terminated in a manner which is not authorised under the law.

57. Accordingly, we do not find any reason whatsoever to interfere with the judgment passed by the learned Trial Judge and we dismiss the appeal. With regard to the imposition of cost, we are of the view that the concept of compensatory justice should be invoked in this case. Otherwise the constitutional rights and protection to citizens will become more lip service or slogan.

58. Within the scope of the writ application, we are unable to grant any relief by way of damages, but certainly we can impose, by invoking the principles of compensatory justice, an exemplary cost assessed as 500 GM. by the union of India.

59. Since the respondent writ petitioner had attained the age of superannuation, there is no question of reinstatement in service at this stage, but appellant should be paid all the arrear pay and allowances as if he was in service until attaining the age of superannuation and the Union of India and appellant shall pay all superannuation benefits and the benefits he is entitled to under the rules and/or the regulations and/or in accordance with the conditions of service on superannuation. Such payments should be made within two months from today.

60. Prayer for stay of operation of the Judgment and order is made by the same is rejected.

Surya Kumar Tiwari, J.

61. I agree.

Appeal dismissed.