
(1994) 02 MAD CK 0073
In the Madras High Court

Dr. B. Ilango

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 21-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 309

Citation : (1994) 2 MLJ 12

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is as follows:

...to issue a writ of certiorarified mandamus calling for the records comprised in the proceedings of the first respondent in G.O.Ms. Nos. 909 and 910, Education (JI), dated 27.9.1993 and quash the said G.Os. and consequently issue a mandamus forbearing the respondents from interfering with the right of the petitioner to continue as Principal till the expiry of the contract period of five years from 13.7.1990 to 12.7.1995....

2. The facts are:

The Regional Engineering College, Thiruchirapalli invited applications for the post of Principal of the Regional Engineering College, Thiruchirapalli in the year 1990. In terms of the advertisement the appointment of the Principal was on the contract basis for one term of five years. The petitioner herein, who was working as Officer on Special Duty, Education Department, Madras, and prior to that he was working as Professor and Head of the Department of Electrical and Electronics Department, Anna University, Madras, applied for the said post, mentioned above. The petitioner was called for an interview by letter dated 7.7.1990 and the petitioner was informed that his appointment to the post of Principal, Regional Engineering College had been approved by the Board of Governors, the second respondent herein, with the concurrence of the State and Central Government and that the appointment was on contract basis for one

period of five years from the date of taking charge. The said letter was addressed to the Principal-in-charge, Regional Engineering College, Tiruchirapalli and a copy of the same was marked to the petitioner. The petitioner alleged in the affidavit that he was relieved from Anna University and joined as Principal, Regional Engineering College, Thiruchirapalli with effect from 16.7.1990. The petitioner further alleges the affidavit that by G.O.Ms. No. 662, Education, dated 13.6.1991, the Government directed that the petitioner has been appointed as Principal Regional Engineering College, Trichy on contract basis under General Rule 11 of the Tamil Nadu State and Subordinate State Rules and he shall be governed by the terms and conditions mentioned in Annexure, annexed to that order. Referring to Clauses 14 and 15 of the terms and conditions governing the contract appointment which have been shown in the annexed thereto in the said Government order, the petitioner alleges that he was to have continued for a period of five years, upto 13.7.1995. While it is so, it seems that impugned order dated 27.9.1993 in G.O. No. 909, Education Department came to be passed, by which the petitioner was informed that the Board of Governors chaired by the Tamil Nadu Education Minister held at its 42nd meeting held on 15.6.1993 resolved to adopt the suggestion of the Ministry of Human Resources Development, Government of India and therefore it has been decided to reduce the term of appointment as Principal, Regional Engineering College, Thiruchirapalli as three years. It is stated that in pursuance of that, the first respondent herein proceeded to unilaterally substitute condition No. 14 of the terms of appointment by reducing the period of appointment from 5 years to 3 years. It is also stated that by G.O.Ms. No. 910, Education, dated 27.9.1993, the first respondent directed that the petitioner was relieved of the duty as Principal and that he should handover charge to Dr. C.R. Kandaswamy, Dean, Planning and Development Department Regional Engineering College, Thiruchirapalli. The petitioner also alleges in the affidavit that he is yet to handover charge. It is also stated that on enquiries he was furnished with a copy of the minutes of the 42nd meeting of the Board of Governors held on 15.6.1993. It is stated that in the said minutes there was no decision taken by the Board of Governors to terminate his appointment as Principal. The petitioner refers to item 6, which deals with terms of appointment of Principal, and alleges that the said resolution only wanted to adopt the suggestion Ministry of Human Resources Development, Government of India and that it does not in any manner seek to take decision to terminate the services of the petitioner, who is the existing incumbent who had served for more than three years as Principal. The petitioner also refers to a letter of the Government of India which was relied on by Board of Governors dated 22.12.1992 and alleges that even on a reading of the said letter it is implicit that in respect of future appointments, the initial appointment should be for a period of three years only subject to renewal depending upon merits. It is also alleged in the affidavit that the said letter has been accepted and adopted at the meeting of the Board of Governors and that it is unimaginable that the said communication could be used to affect the rights of incumbents who are now holding and relieving him of the duties of Principal even before the expiry of the

contractual period of five years and also ignoring the purport of the communication of the Government of India stating that such incumbents could also be renewed depending upon merits. The petitioner further alleges that he served as Principal with utmost sincerity and strived hard to maintain the excellence and reputation of the said college during my tenure as Principal and that there has been no complaint whatsoever against him from any quarters.

3. The petitioner further alleges in the affidavit that the impugned order is ex facie arbitrary, unilateral, unreasonable, violative of the principles of natural justice, that is liable to be set aside on the ground of both promissory and equitable estoppel and that it is contrary to the principle of legitimate expectation. It is also stated that the impugned order relieving the petitioner from the post of Principal is arbitrary and unilateral and is liable to be set aside as offending Article 14 of the Constitution of India. It is also stated that the petitioner that he was appointed on contract basis for five years by way of an advertisement and as such the respondents cannot unilaterally reduce the said term of appointment without themselves incurring the consequential liabilities. It is also alleged that one party cannot unilaterally reduce or alter the terms and conditions of contract to the prejudice of the other party especially, by a public authority in the field of public law in the matter of employment. The petitioner further alleges that a perusal of the minutes of the meeting does in no manner show that the Board of Governors had decided or resolved to relieve him or terminate as Principal, and as such, in the absence of a decision having been taken by Board of Governors the impugned order it cannot be put an end to the petitioner's contract of appointment. It is further alleged that a reading of the letter addressed by the third respondent dated 22.12.1992, it will be clear that such a direction has been given only for future appointments. It is further alleged that the said communication of the Government of India on the decision of the respondents 1 and 2, cannot affect the right of the petitioner in any way and that in any event, the Board of Governors cannot put an end to the contract of appointment which was for one period of five years no fault of his. It is also pointed out that the Government of India did not say that the present incumbents could only hold office for a period of three years. It is further alleged that the impugned order is liable to be set aside as it is violative of Articles 14 and 21 of the Constitution of India, as the right to life includes right of employment and reputation and a person who is holding the post cannot be terminated unilaterally and arbitrarily without any fault on his part and by following a procedure not established by law to take away his existing and vested right under a contract. It is also alleged that the impugned order is liable to be set aside both on the ground of promissory estoppel and equitable estoppel. It is also stated that a representation was made by the respondents that with the sanction of the Board of Governors and the State and Central Government, the appointment of the petitioner has been made on contract basis for one term of five years and that after having made such representation and without there being any fault on the part of the petitioner, the respondents 1 and 2 cannot go

back and alter the terms unilaterally. It is also alleged that a legitimate expectation had accrued in favour of the petitioner to continue the post of Principal and as such he should be allowed to continue for such period. It is further stated that the impugned order offends all canons of natural justice in as much as no notice was given and that there was no proper consideration by the Board of Governors. With these allegations, the petitioner is before this Court.

4. A counter-affidavit has been filed by the first respondent stating that in its communication dated 6.4.1989 to the Principals and Principal Secretaries of all Regional Engineering Colleges in its capacity as Chairman of the Advisory Committee decided as a matter of policy that Principals in the Regional Engineering Colleges may be appointed by the respective Board of Governors on contract basis for initial term of three years. It is also stated that the Deputy Educational Advisor, Department of Education sent a communication by telegram post confirmation copy dated 28.5.1990 about the decision that appointment of Principal on contract basis should be only for a period of three years. It is further claimed in the counter-affidavit that since the Government has to process the selection of the Principal, advertisement as well as appointment was made as per the then existing arrangement, that the Principal of Regional Engineering College wrote a letter to the Deputy Educational Advisor, Government of India stating since he will be retiring by end of June, 1990 pending decision of the contract period, permission may be accorded to enable the selected person to take up the job on 1.7.1990. It is also claimed in the counter-affidavit it was not the intention of the first respondent to appoint the petitioner for a period of five years and that pending decision he was appointed as per existing resolution. It is further claimed in the counter-affidavit that the petitioner's appointment was not with unalterable condition regarding the period of five years, that the said terms were contrary to the recommendations of the Government of India, that only on the assurance of the then Principal that amendment would be made approval was given, and that the petitioner did not take any steps to amend the resolution in line with the Government of India policy. It is further claimed in the counter-affidavit that by letter dated 22.12.1992, the Director Government of India, Ministry of Human Resource Development brought to the knowledge of the Principal, Regional Engineering College, Thiruchirapalli requiring to amend the term of appointment and that it was requested in that letter to reconsider the matter in the next Board of Governor's meeting. It is pointed out that in the Meeting of the Board of Governors held on 15.6.1993, a decision was taken to the following effect.

...Resolved to adopt the suggestion of the ministry letter No F - 1/8/90 TD/111; dated 22.12.92 regarding the term or appointment of Principal.

It is claimed in the counter-affidavit that in view of the above mentioned resolution, the appointment of the Principal, Regional Engineering College can be only for a period of three years, that the decision of Government of India was based on the uniform policy that all the 17 Principals of Regional Engineering

Colleges should be uniformly appointed only for a period/term of three years and as such the petitioner's appointment cannot exceed the term of three years. It is also claimed in the counter-affidavit that the decision to reduce the term of deputation for a period of three years is not unilateral, that the petitioner herein was a member of the Board of Governors, that he has given his concurrence and consent, that it was only a follow-up action to make the posts of Principal for a term of three years, that the relevant clause was amended and the period reduced to three years and that the petitioner being on a contract basis, the petitioner has no legal right to continue beyond the term now prescribed by the resolution and by the order of the Government. It is further claimed in the counter-affidavit, that in the Board Meeting, the petitioner did not raise any objection or sought clarification as to the question of applicability of the resolution that the petitioner was fully aware that his period of appointment will be brought to a period as per the decision of the Board of Governors, and that he knew that the period was fixed subject to amendment. It is also stated that the petitioner has been reverted back to his parent department and that the appointment of the petitioner on deputation basis for a contract period of five years cannot be compared with the contract appointment of an unemployed person. It is further pointed out that the petitioner has been relieved of the post with immediate effect and even as early as on 4.10.1993 and that the new incumbent Dr. C.R. Kandaswamy has assumed charge and as on date he is functioning as Principal. It is further claimed in the counter-affidavit that the petitioner has no vested right to continue in employment and that the order of the Government decision is not arbitrary. It is further pointed out that the original appointment was made at the time when the then Principal was about to retire, that no resolution could be passed to alter the tenure of the appointment and as such the impugned order is fair and reasonable. It is further claimed in the counter-affidavit that Clause 14 of the Annexure regarding the terms of appointment is not inviolable since it is only a term of contract and that the same can be altered or changed. It is further claimed that the impugned order based on the public policy and in the interest of education and administration.

5. A counter-affidavit has been filed by the second respondent stating the writ petition is not maintainable either in law or on facts. It is claimed in the counter-affidavit that as the respondent institution is an autonomous institution and the petitioner came to be appointed under a service contract, the petitioner is not entitled to maintain the writ petition. It is also claimed that the terms of service contract are varied in view of the recommendations of the third respondent which the respondents 1 and 2 are bound to consider, that the reduction of period is to bring an uniformity and as such the petitioner cannot make out any grievance. It is further claimed in the affidavit that there is no statutory force behind the contract, that any premature termination will give only a civil right to the petitioner and as such the writ petition alleging violation of fundamental rights is devoid of merits. It is also claimed in the counter-affidavit that the reduction in the contractual period is due to the unforeseen circumstances viz.

the policy decision of the third respondent to have a uniform code. It is also claimed that the petitioner cannot be termed as Government servant and as such Article 311 cannot be made applicable. It is also claimed that there is no arbitrary, unilateral or unreasonable action on the part of the respondents. It is also pointed out that there is no discrimination. It is also pointed out that it is only on termination, the petitioner has filed the writ petition and as such there is no substance in this ground. It is further pointed out that there is no violation of Articles 14 and 21 of the Constitution and that the ground of attack with reference to promissory and equitable estoppel is also without any basis.

6. A counter-affidavit has been filed by the third respondent/Union of India stating that the Regional Engineering College, Trichy is an autonomous Institute fully funded by the Central Government and the State Government of Tamil Nadu. It is further claimed in the counter-affidavit that as per Article 3 of the Memorandum of Association, the Society has established the college and carried on its administration and management through the governing body known as Board of Governors having representatives of the Central Government, State Government, University Grants Commission, All India Council for Technical Education with the Principal of the College as its ex-officio Members Secretary. It is further claimed in the counter-affidavit that the Board of Governors is the appointing authority for the post of Principal in Regional Engineering College, Trichy as provided in Rule 15(i) of the College Society which reads that the Board of Governors shall appoint the Principal of the college with the approval of the Central and State Government. It is further claimed in the counter-affidavit that the Government of India by letter dated 6.4.1989, suggested that the Principals in Regional Engineering Colleges should be appointed on contract basis for a period of three years with possibility of renewal for another term with the approval of Central and State Governments. It is further claimed that the Member Secretaries were requested to place the matter before the Board of Governors for passing a suitable resolution in that behalf. It is further claimed that it was made clear in that letter that the provision would be applicable for all future requirements after amending the Rules of the Society. It is also stated that during its 37th meeting held on 21.10.1989, the Board of Governors resolved that the term of appointment of Principals in Regional Engineering Colleges may be for a period of five years on contract basis and that the term of Dr. S. Nagarathnam, the then Principal was not reduced on the basis of that resolution of the Board. It is further claimed in the counter-affidavit that on superannuation of Dr. S. Nagarathnam, on 30.6.1990 the Board of Governors advertised calling for application for the post of Principal to be filled up on contract basis and that the petitioner herein was appointed as Principal of Regional Engineering College, Trichy on contract basis for a period of five years with the approval of the State and the Central Government as required under Rule 15(i) of the Rules of the College Society. It is further pointed out that the suggestion of the Ministry of Human Resources Development dated 22.12.1992 was made to all Regional Engineering College who opted for five years term for

the post of Principals on contract basis and that during the 42nd meeting held on 15.6.1993, the Board of Governors of the college resolved to adopt the suggestion of the Ministry letter dated 22.12.1992 regarding the term of appointment of Principal. It is categorically stated that consequent to the said resolution, the Rules of the College Society have not been amended and that the question of reducing the term of appointment of the petitioner has not been considered by the Board of Governors. It is further stated in the counter-affidavit that in the letter addressed to the second respondent, dated 4.10.1993, it was clarified that the suggestion to appoint the Principal for an initial term of three years would be applicable to future appointments only and that it was not the intention of the third respondent to disturb the petitioner's tenure of five years or to commit breach of contract in any manner. It is also claimed by the third respondent that it was not a party to the action of the respondents 1 and 2 in terminating the petitioner's appointment by premature rescission of the contract, and as such this Court may please be passed an order absolving the third respondent of any liability.

7. Mr. Mohan Parasaran, the learned Counsel for the petitioner contended that the impugned order has been passed arbitrarily and that it offends Article 14 of the Constitution of India. It is also contended by the learned Counsel that the resolutions passed by the Board of Governors do not validate the impugned order passed. According to the learned Counsel, the Government order cannot affect the right of the petitioner, in so far as the petitioner has been appointed for a period of five years after calling for applications through advertisement. According to the learned Counsel, the petitioner has been selected and appointed as per the Rules of Board of Governors, as referred to by the third respondent. Learned Counsel further contended that as referred to by the third respondent, the period of tenure of appointment is five years and that it has not been reduced to three years. It is further contended by the learned Counsel for the petitioner, that even the letter of the third respondent of the year 1989 as stated in the counter-affidavit has not been followed by the Board of Governors, till the resolution which has been relied on by the Government, is passed by the Board of Governors in June, 1993. According to the learned Counsel, the appointing authority is the Board of Directors and so far as the appointing authority has not passed the order, the impugned order cannot stand and it has to be set aside on that ground. It is further contended that the Government has no jurisdiction to pass such an order relieving the petitioner from the post of Principal, unilaterally when the appointing authority is the Board of Directors as per the Rules of the Society, as stated in the counter-affidavit filed by the third respondent. Learned Counsel for the petitioner further contended that it is an appointment on contract basis, that the Government has approved it, that the Board of Directors has passed such a resolution, that the respondent Government has approved the order passed in the year 1991 enumerating the length of service of the Principal and as such the respondents are estopped specifically, from reducing the period of five years to three years unilaterally and that the order is hit by the principle

of promissory estoppel. It is further contended that when the petitioner has been told that he has been appointed for five years it is not open to the respondents to reduce the period to three years. Learned Counsel for the petitioner further contended that a reading of the counter-affidavit of the third respondent will show that the action taken by the respondents is illegal and arbitrary, and that the respondents cannot take shelter of the letter of the third respondent dated 22.12.1992 and try to defend the impugned order. Learned Counsel further refers to the decisions in Vice Chancellor, Osmania University v. Chancellor AIR 1967 S.C. 1305. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, and in Govind Prasad Vs. R.G. Parsad and Others, for the proposition that even assuming the appointment is on contractual basis, it has to be struck down as it violates Article 14 of the Constitution of India. Learned Counsel further contended that the second respondent is amenable to the writ jurisdiction of this Court and that it has been held so in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, Learned Counsel further pointed out that the resolution passed under the Rules of the Society cannot support the stand of the respondents that the period of service of the petitioner, which is on the contract term of five years, has been automatically reduced to three years. Learned Counsel further contended that insofar the Rules are not amended and that no order has been passed by the Board of Governors reducing the petitioner's services to such a period, the State Government has no jurisdiction to pass an order, which is impugned herein.

8. Mr. R. Krishnamoorthy, the learned senior Counsel appearing for the second respondent mainly contended that no writ will lie to enforce a contract and that the prayer of the petitioner cannot be granted. Learned senior Counsel contended that at best the petitioner can resort to some other remedy claiming damages and writ petition under Article 226 of the Constitution will not lie. Learned senior Counsel relies upon the decisions in Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, . In Vaish Degree College v. Lakshmi Narain AIR 1976 S.C. 888 and in Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, in support of his contention. Learned senior Counsel further contended that even assuming for a moment that the Regional Engineering College is amenable to the writ jurisdiction, the impugned order cannot be set aside, as the right claimed, stems out of contract. Relying upon the decision in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], . the learned senior Counsel tried to contend that a writ cannot lie against the second respondent herein and it has got to be dismissed.

9. Mr. P. Shanmugham, the learned Special Government Pleader appearing for the respondent State contended that the petitioner herein virtually challenges the resolution of the second respondent and that the petitioner cannot do it. Referring to the resolution of the Board of Governors, the learned Special Government Pleader contended that a reading of the resolution in the background as to what had happened before the meeting, would clearly show

that it related to the contract period of the Principal of the Regional Engineering College and to bring uniformity it has been decided to reduce term to three years. Learned Special Government Pleader further contended that the appointment of the petitioner arises out of contract and that the petitioner cannot enforce it by way a writ petition, an extreme argument was put forth by the learned special Government Pleader that when the petitioner has been relieved from the post he has to go back to the parent department and that the petitioner cannot have any objection to this.

10. I have given my due consideration to the arguments of Mr. Mohan Parasaran, the learned Counsel appearing for the petitioner, and of Mr. R. Krishnamurthy, the learned senior Counsel appearing for the second respondent and of Mr. P. Shanmugham, the learned Special Government Pleader and of Mr. R. Santhanam, the learned Additional Central Government Standing Counsel. In my view that is a clear case where the impugned order has been passed without any jurisdiction. There cannot be any dispute that the Regional Engineering College is governed by the provisions of Societies Registration Act and by the Rules. It is seen from the counter-affidavit of the third respondent and by the Rules, the Board of Governors is the appointing authority. On the facts and circumstances of this case, it cannot be disputed that the petitioner has been appointed for a contract period of five years. The petitioner has been relieved from Anna University and to that effect a letter dated 11.7.1990 has been written by the secretary to Government to the Vice-Chancellor, Anna University. It is seen that the appointment as Principal for five years has been made by terms and conditions of the deputations given in G.O.Ms. No. 662, Education, dated 13.6.1991. The said order has been passed under General Rule 11 of the Tamil Nadu State and Subordinate Services and the appointment is for a term of contract. Rules 11(1) and 11(2) reads as follows.

...Appointment by agreements : (1) When in the opinion of the state Government special provisions inconsistent with any of these rules or of any other rules made under the proviso to Article 309 of the Constitution of India of that Constitution (hereinafter referred to this rule as the said rules) are required in respect of conditions of service, pay and allowances, pension, discipline, and conduct with reference to any particular post, of any of them it shall be open to the State Government to make an appointment to such post otherwise than in accordance with those rules or the said rules and to provide by agreement with the person so for any of the matters, in respect of which in the opinion of the State Government special provisions are required to be made and to the extent to which such provisions are made in the agreement, nothing in these rules or the said rules shall apply to any person so appointed in respect of any matter for which provision is made in the agreement.

(2) A person appointed under Sub-rule (1) shall not be regarded as a member of the service in which the post to which he is appointed is inclined and shall not be entitled by reason only such appointment to any preferential claim to any other

service....

By virtue of the appointment, the petitioner has been holding the post of Principal. It is seen from the letter written by the Secretary to Government, Education Department addressed to the Principal in charge, Regional Engineering College that the petitioner has been appointed as Principal on contract basis for a period of five years from the date of taking charge. This has been approved by the State and Central Governments. It seems the petitioner has taken charge on 13.7.1990. It seems that on 21.10.1989, a resolution has been passed by the Board of Governors of Regional Engineering College to the effect that the term of appointment of Principals in RECS., may be for a period of 5 years only on contract basis and that the said view of the Board may be communicated to the Government of India. This has been done at the 37th Meeting of the Board of Governors and the same has been communicated to the Government of India, by the then Principal on 8.6.1990, who is due to retire. It is also seen that it has been requested in the said letter that pending decision on the contract period, the Ministry may accord permission to enable the selected person to take up the job on the first day of July, 1990. This view has been concurred by the Central Government, i.e. the appointment of the petitioner as Principal, as proposed. The matter stood at that. As I have already stated, the petitioner took charge 13.7.1990 as Principal of the Regional Engineering College, Thiruchirapalli. As the petitioner herein has been deputed to the Regional Engineering College, Anna University approved the terms and conditions of the Board of Governors to that effect. The terms and conditions governing the contract appointment of the petitioner had been annexed to the Government order in G.O.Ms. No. 662, Education, dated 13.6.1991 and Clauses 14 and 15 are relevant for the purpose of deciding this case and it is to the following effect:

...The period of appointment of Dr. B. Ilango with the Regional Engineering College, Trichy shall be for a period of five years as a special case from the date of relief from the University i.e. 12.7.90 afternoon.

The period of appointment will not be extended more than 5 years on any circumstances. On completion of 5 years he should be reverted back to Anna University or he should resign his post in Anna University.

At this stage, a letter has been addressed to the Principal, Regional Engineering College, Tiruchirapalli, by the Government of India, Ministry of Human Resource Development requesting to consider the matter in the next Board of Governors to maintain uniformity and it reads as follows:

...Sir,

I am directed to invite your kind reference to this Ministry's letter No. A. 11013/20/88-T.4, dated 6th April, 1989, wherein Regional Engineering Colleges were required to amend their Memorandum of Association to the effect that the Principals of Regional Engineering Colleges may be appointed by the respective Board of Governors on a contract basis for an initial term of 3 years with the

possibility/provision of renewal depending upon the merits. In response to this you have communicated to have the term as five years as your preference.

You are requested to reconsider the matter in your next Board of Governors to maintain uniformity of the term of appointment of Principal among all Regional Engineering Colleges.

Action taken thereof on the subject matter may be intimated to this Ministry immediately for further necessary action.

This letter was placed before the Board of Governors and the resolution passed in the meeting on 15.6.1993 with regard to the term of appointment of Principal resolved as follows:

...Resolved to adopt the suggestion of the Ministry Lr. No. F. 1-8/90 T.D. III, dated 22.12.1992 regarding the term of appointment of Principal.

In my view, no suggestion has been given by the Government of India in its letter dated 22.12.1992 to put an end to the context of the petitioner which is existing. What all required by the Government of India was that the matter has to be placed before the Board of Governors to decide about the terms of appointment of Principal of Regional Engineering Colleges on contract basis. That is all. It is also clear from the letter of the Government dated 22.12.1992, extracted above, that the initial appointment of term is only for three years and the possibility/provision of renewal will be depending upon merits. It is not as if the term of appointment should be only for three years. Herein this case, the petitioner has been appointed for a term of five years and the period lasts till the year 1995. Assuming that the Board of Governors has passed a resolution, I do not think that the Government can pass such an order, which is impugned herein, relieving the petitioner arbitrarily. As I have already stated, the resolution, in my view, is not very clear. There is no mention that the petitioner's services to be terminated and that the new resolution has to be applied to the petitioner's case reducing the terms of three years. It cannot be disputed that the Rules of the Society have not been amended. In so far as the Board of Governors is the appointing authority, in my view, the Government has no business to pass the impugned order relieving the petitioner herein from the post of Principal unilaterally. It is a matter between the Regional Engineering College, the second respondent and the petitioner herein. It is true that the right of the petitioner flows from the contract, and the appointment has been made on contract basis. Yet, if it is done arbitrarily, in my view, it has got to be set aside. I am not able to agree with the arguments of Mr. R. Krishnamurthy, the learned senior Counsel, that a writ will not lie on the facts and circumstances of this case. The facts of the cases, referred to in support of his contention, are entirely different. It is settled law now, that any arbitrary action is violative of Article 14 of the Constitution. When the impugned order herein, is tested in such a way, I have no hesitation to hold that the impugned order is passed in violation of Article 14 of the Constitution of India and that Article 14 of the Constitution applies to a case

of violation in contractual matters. By violating one of the conditions of the contractual rights, the fundamental rights of the petitioner are affected. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , the Supreme Court has held as follows:

...The preamble of the Constitution of India solves to secure to all its citizens justice, social, economic and political, and equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains "Directive principles of state policy" which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in part III for protection against excesses of state action, to realise the vision in the preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14-non-arbitrariness which is basic to rule of law-from state actions in contractual field when all actions of the state are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in any sphere of his activity contrary to the professed ideals in the preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters, but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals. There is an obvious difference in the contracts between private parties and contracts to which the state is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every state action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the state or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

...Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.

The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter remitting it to cast off its garb of State to adorn new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as state which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the state which must invariably be in public interest and those of a private individual, engaged in similar activities being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity....

At page 551, it has been held as follows:

...Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14....

In *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, it has been held as follows:

...In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. To satisfy this requirement of non-arbitrariness in a State action, it is therefore, in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision. Whether the expectation of the claimant reasonable or legitimate is a question of fact in each case. Whenever

the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny....

So if the order which is impugned in this writ petition is tested on the backdrops of the decisions cited supra, I have no hesitation to hold that it is violative of Article 14 of the Constitution and that it has been passed arbitrarily and without application of mind. I am of the view that when the resolution of the Board of Governors is not very clear and the appointing authority is the Board of Governors, the Government has no jurisdiction to pass the impugned order, relieving the petitioner from the post of Principal, Regional Engineering College.

11. With regard to the contention of the learned senior Counsel that the writ petition is not maintainable, I do not think that it can be accepted. Reliance is made on the decision of the Supreme Court in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], , by the learned senior Counsel in support of his contention and I do not think that it can be accepted. In Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . With regard to the one of the Regional Engineering Colleges of this college, which is also under the Societies Registration Act, it has been held that it is a "State" within the meaning of Article 12 of the Constitution of India. When there is a direct authority on this issue by a Bench of five Judges of the Supreme Court, I do not think that the learned senior Counsel appearing for the second respondent can still contend that a writ petition will not lie against the Regional Engineering College, the second respondent herein. Moreover, a writ is sought for in this writ petition to quash the impugned order passed by the State and in such situation, I do not think that such a contention can be raised by the learned senior Counsel appearing for the second respondent herein.

12. It is made clear, as I have already stated, in the counter affidavit filed by the third respondent as to what the intentions are. The third respondent has come out with correct position in the counter-affidavit that the present resolution of the Board of Governors cannot affect the right of the petitioner to hold the appointment. It is only for future appointments and certainly it cannot be applied for the present incumbent, in view of the decision of the Supreme Court in Vice Chancellor, Osmania University v. Chancellor AIR 1967 S.C. 1305. On a perusal of the files produced before me, it is seen that on 2.5.1990, the Government seems to have written to the Ministry of Human Resources and Development Department, New Delhi about the selection of the petitioner as Principal, Regional Engineering College and that his appointment shall be on contract basis for a period of five years. A reminder has been sent on 14.6.1990 by way of telegram seeking reply. The Government of India has sent a telex message on 6.7.1990 concurring with the appointment of the petitioner as Principal, Regional

Engineering College, Trichy as proposed. In view of that, there is no subsistence in the contention of the learned Special Government Pleader that the appointment of the petitioner has been made, pending a final decision. Unfortunately, the learned Special Government Pleader relies upon the letter of the then Principal dated 8.6.1990, wherein it has been stated that pending decision of the contract period, the Ministry may kindly accord permission to enable the selected person to take up the job on the first of July, 1990. But the fact remains that the Government of India has approved the terms of the appointment of five years period, by the telex message on 6.7.1990, as could be seen in the files. Moreover, the learned Special Government Pleader is not able to contend that the resolution is very clear and by that resolution, the petitioner's term of office has been reduced to a period of three years.

13. The next point that arises for consideration is that the appointment of the Principal is only on deputation and it is open to the Government to call to the parent department. May be so. But it depends upon the terms and conditions of the service which have been prescribed under Rule 11 of the State and Subordinate Service Rules, mentioned above. It cannot be done arbitrarily. Surely, in my view, the State Government cannot unilaterally change the services of a person, like that of the petitioner herein, even if it is on a contract basis. As I take the view that the State Government has passed the order, which is impugned herein, hastily and without application of mind and arbitrarily, it has to be set aside.

14. For the reasons stated above, the impugned order is set aside, this writ petition is allowed and the first respondent is directed to allow the petitioner to continue as Principal, Regional Engineering College, Tiruchirapalli for the rest of the term. However, there will be no order as to costs.