
(1991) 05 DEL CK 0037
In the Delhi High Court
Case No : C.W. No. 3406 of 1990

Lt. Col. A.K. Dogra (Retd)

APPELLANT

Vs

Indian Railway Construction Company Ltd. and Another

RESPONDENT

Date of Decision : 27-05-1991

Acts Referred:

Citation : (1991) 05 DEL CK 0037

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Judgement

1. By this order, I propose to dispose of Civil Writ Petition No. 3406 of 1990, filed by the petitioner Lt. Col. A. K. Dogra (retd.), whereby he seeks an appropriate writ, order or direction for setting aside and quashing clause 2 of appointment letter dated December 22, 1988, issued in his favor. He also seeks to quash the letter dated September 6, 1990, and Office Order No. 834/90 dated October 22, 1990, and he further seeks a declaration that the petitioner continues to remain in employment of the respondent. Indian Railway Construction Co. Ltd. till his services are terminated in accordance with law. He also seeks an order of prohibition against the said respondent restraining the respondents from interfering or, in any manner, stopping the petitioner from the performance of his duties as Chief Manager (Civil) in the corporate office of the respondent.

2. The facts giving rise to this petition, as stated in the petition, are as under

3. The petitioner states that the respondent company is an undertaking of the Government of India, and as such is a State within the meaning of Article 12 of the Constitution of India, and is amenable to the writ jurisdiction of this Court. This contention is not disputed by the Respondent No. 1.

4. The petitioner states that he is a Civil Engineer. He was commissioned in the Corps of Engineers in the Indian Army in the year 1966, upon his graduating from the Banaras Hindu University. He served the Army for 23 years, which included eight years in the Border Roads Organisation. He further stated that he

was also sent on deputation to the National Hydro Electrical Project, Manipur at Lokteck.

5. The petitioner asserts that he has an excellent and unblemished career in the Armed Forces and other organisation wherever he worked.

6. The petitioner says that an advertisement was issued by the respondent company, which was published in some papers on February 27, 1988. By the said advertisement the respondent company for one post of Chief Project Manager. The advertisement so far as it is relevant to this case reads as under :

INDIAN RAILWAY CONSTRUCTION CO. LTD.

(A GOVT. OF INDIA UNDERTAKING)

Requires the following personnel for their construction project in India.

1. CHIEF PROJECT MANAGER : 2 POSTS (1 Genl. 1 SC); Scale Rs. 2250-2500 : Qualification : Civil Engineering Graduate with minimum 18 years experience in officer cadre and has held senior position in the Construction field. Experience in executing earth work, concreting etc., with machines.

XXX XXX XXX Note : (A) Age limit as on December 31, 1987 for post at S. No. 1 = 40 to 45 years

(B) Approx. total emoluments for posts at S. No. 1 = Rs. 5027/-. Total emoluments include Basic Pay, Dearness Pay, Dearness Allowance & Interim relief only. HRA, CCA & other allowances will depend on place of posting as per Company's rules (Company's pay scales are likely to be revised).

X X X X (D) Appointment will be initially on contract basis for a period of two years.

7. As is clear from the advertisement, the Chief Project Manager post was in the scale of Rs. 2250-2500, and requisite qualifications the reform were Civil Engineering Graduate with a minimum of 18 years of experience in officer cadre, and holding of senior post in construction field. The advertisement specifically provided that "experience in executing earth work, concreting etc., with machines" was a qualification. It is clear from the advertisement, that the appointment was to be initially on a contract basis for a period of two years.

8. The petitioner says that he applied for the post of the Chief Project Manager.

9. The respondent company by its letter dated December 22, 1988, offered the post of Chief Project Manager to the petitioner on the terms and conditions, stated therein. The said letter dated December 22, 1988 reads as under :

INDIAN RAILWAY CONSTRUCTION COMPANY LIMITED

(a Govt. Of India Undertaking)

Palika Bhawan,

Sector No. XIII,

R. K. Puram,

New Delhi-110 006.

Dated 22.12.1988.

No. IRCON/PP/1394

Shri Lt. Col. Ashok Kr. Dogra Staff

Officer to Additional Director

General Engrs. (Pers.),

Engineering-in-Chief's Branch,

Army Headquarters, Kashmir House,

DHQ P.O. New Delhi-110 011.

Sub : Appointment to the post of Chief Project Manager, in scale Rs. 2250-2500 for a period of 2 years on contract basis in Indian Railway Construction Co. Ltd.

You are offered an appointment to the post of Chief Project Manager, purely on contract basis for a period of 2 years in this company on an initial pay of Rs. 2250-2500 in the scale of Rs. 2250-2500 or IRCON's Project on the following items & conditions :

(i) Emoluments : You will be entitled to pay of Rs. 2250/- in scale Rs. 2250-2500 plus allowances as admissible under the rules of the company.

(ii) Term of Appointment : Your appointment will be on contract basis for a period of 2 years from the date your assume charge, terminable "any time without notice and without assigning reasons therefore".

(iii) traveling Allowances : You will be entitled to traveling Allowance and reimbursement of Railways fares incurred on official tours in terms of IRCON TA Rules as applicable to category "A" employees.

(iv) Medical Reimbursement : You will be entitled to reimbursement of medical expenses up to a maximum of Rs. 5,000. P.A. during the period of your contract appointment for self and family on production of relevant vouchers as prescribed under company rules.

1. Leave : You will be entitled to proportionate Casual Leave only during the period of your contract appointment.

2. The appointment will be subject to the production of the following documents at the time of reporting for duty :

(a) Original certification in support of your educational, technical and professional qualifications, documentary proof in respect of date of birth etc. together with

attested copies thereof.

(b) Identity certificate after filling up the Attestation from (copy enclosed) in triplicate.

(c) In case you belong to SC/ST, one of the following certificates in original should be produced.

(i) matriculation or School Leaving Certificate giving your caste/community and place of residence.

OR

(ii) A certificate in the enclosed form issued by one of the authorities enlisted therein.

4. You should sign the following declaration in the forms enclosed to this letter :

(a) Declaration of Marriage.

(b) Relationship/connection with the Board of Director (s) of the Company.

5. You should produce a medical certificate of fitness from a Regd. Medical Practitioner.

6. You will not, save with the express permission of the company, engage in any trade or business or undertake any other work or any employment else where full-time or part-time, while in the service of the company.

7. In regard to any matters, not specifically covered in the foregoing paragraphs, you will be governed by the Rules and orders applicable, from time to time, to the employees of the company.

8. If any declaration given or information furnished by you proves to be false, or it is found that you have willfully suppressed or withheld any material information, you will be liable to removal from service forthwith without any notice, and without assigning any reason. Therefore notwithstanding any action taken against you as the company may deem fit and necessary.

9. No traveling allowance (TA/DA) will be admissible to you for joining the appointment.

If the above terms and conditions are accepted, you may please communicate your acceptance (or otherwise) within a fortnight of the receipt of this letter, duly signed to the undersigned, and report to this office along with the documents mentioned in this letter, by January 25, 1989, failing which the offer will stand cancelled.

Yours Faithfully,

For and on behalf of

INDIAN RAILWAY CONSTRUCTION CO. LTD.

sd/-

(DD. AGARWAL)

CHIEF MANAGER (PERS.)

10. It is to be noted that in the said letter of appointment, in clause 2 thereof, which related to term of appointment, it was stated that "Yours appointment will be on contract basis for a period of two years from the date you assume charge, terminable any time without notice and without assigning reason therefore". The difference between the Note (D) which has been reproduced above, and clause 2 reproduced above, is obvious. Whereas the advertisement contain the words "appointment will initially be on a contract of two years", the appointment letter did not state that the initial appointment will be for a period of two years. There was this subtle change in the terms in which the offers were invited by the advertisement dated February 27, 1988, and the terms offered in the letter dated December 22, 1988. This letter clearly stipulated that the term of appointment offered was on contract basis, for a period of two years from the date the petitioner assumes charge; it was also added that contract of appointment was "terminable any time without notice and without assigning any reason therefore." The provision regarding termination is not to be found in the advertisement, which was published inviting persons to apply for the post. This was however incorporated in the offer of appointment, which was made by the respondent company to the petitioner in the letter dated December 22, 1988.

11. The respondent company also wrote to the Military Secretary on December 26, 1988, seeking verification of character and antecedents of the petitioner through civil authorities. That letter also informed the Military Secretary that the petitioner had been selected as Chief Project Manager in the respondent company.

12. The petitioner contends that he made verbal enquiries regarding the contract period of two years which was mentioned in the advertisement, at the time of his interview, and he was told that this was being done as a result of practice of the respondent company, and that the petitioner was at that time assured that he would be continued, and in fact, confirmed in sought this clarification is as much as if he joined the respondent company, he would he have to leave his service in the Army, where he had still six or seven years of service left. The petitioner asserts that on the basis of the clarification at the interview, believing it to be bonafide, the petitioner agreed to join the respondent company.

13. The petitioner says that the Army Headquarters granted permission sought to the petitioner, consequent whereupon he joined the duties with the respondent on March 17, 1989.

14. The petitioner avers that he received a Memorandum from the respondent company on September 6, 1990, which stated that services of the petitioner would no longer be required w.e.f. September 6, 1990. The said Memorandum

reads as under :

"No. IRCON/Estt/PF/1394 Dt. September 6, 1990 MEMORANDUM

In terms of para (ii) of Letter No. IRCON/PF/1394 dated December 22, 1988, appointment Lt. Col. Ashok Kumar Dogra as Chief Project Manager in scale Rs. 2250-2500 (prerevised) on contract basis for a period of two years, Lt. Col. Ashok Kumar Dogra is hereby informed that his services are no longer required w.e.f. September 6, 1990.

Sd/-

(S. D. JAIN)

Director-Project"

15. It is the contention of the petitioner that the said Memorandum was not signed by authorised and competent person. Nor was the signatory of the Memorandum the appointing authority in case of the petitioner. The petitioner says that he met the higher officers of the respondent company, as a result of which he said Memorandum was not sent to various Sections and Offices of the respondent company, and it was agreed to be kept in abeyance, as the respondent had agreed that his services would not be dispensed with and he continued to work even after September 6, 1990.

16. The petitioner states that again in October 22, 1990, he received another Office Order No. 834/90, by which his services were terminated retrospectively w.e.f. September 6, 1990. The said office order reads as under :

"OFFICE ORDER No. 834/90

The services of Shri A. K. Dogra, Chief Manager (Civil), Corporate Office who was appointed on contract basis for a period of 2 years from March 17, 1989, have been terminated w.e.f. September 6, 1990 (AN).

This has the approval of the competent authority.

Sd/-

(D. D AGARWAL)

General Manager (Personnel)"

17. The respondent company does not dispute the facts regarding the qualifications of the petitioner, that he was fit for being appointed as Chief Project Manager, that he functioned as Chief Project Manager on different projects. The respondent contends that the invitation to offer as contained in the advertisement dated February 27, 1988 was modified by the offer of employment of December 22, 1988. The respondent also contends that the termination of employment of the petitioner was in accordance with the terms contained in the letter offering employment, namely, that the appointment was on contract of two

years : that the appointment was terminable any time without any notice and without assigning any reasons Therefore, and, Therefore, the termination which was done by the respondent w.e.f. September 6, 1990 by the aforesaid two letters dated September 6, 1990 and October 22, 1990 is in full force and effect, and the petitioner has no right to complain by a writ petition, in as much as in exercise of its writ jurisdiction, this Court does not entertain writs arising out of contractual relationship between the parties, and in support of this proposition, the parties, and in support of this proposition, the respondent refers to and relies upon the recent judgment of this Court in *Amarjit Kaur v. Union of India* 1991 1 CLR 828 which judgment was delivered on September 21, 1990.

18. As against this contention of the respondents, Mr. Swatantar Kumar, learned counsel for the petitioner, places reliance upon the judgments in *Delhi Transport Corporation v. D. T. C. Mazdoor Congress & Ors.* 1991ILLJ-395 *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, *Kumari Shrulekha Vidyarthi and Others Vs. State of U.P. and Others*, as also *Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others*,

19. Based upon the aforesaid judgments, Mr. Swatantar Kumar contends that respondent No. 1, being an instrumentality of the State, vis-a-vis the petitioner exercises unequal bargaining powers, and as much as such the provisions of clause 2 of the offer of employment contained in letter dated December 22, 1988, which clause is a manifestation of unequal bargaining power, is liable to be struck down for the reasons stated in the *Central Inland Water Transport Corporation* case. He further contends that similar provisions were contained in Regulation 9-B dealt with in the *Delhi Transport Corporation* case, which regulation was struck down by the Supreme Court as illegal. He says that it makes no material difference whether the impugned provision is contained in the Standing Orders, or whether the same is to be found in the letter containing offer of employment, the purpose and effect thereof is the same.

20. Mr. Swatantar Kumar also contends that the action taken by the respondent is mala fide, in as much as the principle of "last come first go" is not applied to the persons who joined the respondent company after the petitioner joined, as the later appointees are continuing in the same project, while the petitioner has been asked to go.

21. Mr. Swatantar Kumar further contends that not only the action of termination of the services of the petitioner is arbitrary and mala fide on the above said account, it is also mala fide and arbitrary for the reason that the respondent company continues to have the need for Chief Project Managers, and continues to advertise for posts, asking persons to apply for such posts. Mr. Swatantar Kumar also contends that the offer of employment which was made to the petitioner, was not an offer which was confined to a particular project, but it was a general offer, inasmuch as the petitioner was to be the Chief Project Manager and as the respondent company had and continues to have number of projects in

hand, and continues to take further projects in hand, posts are available with the respondent company, for which the petitioner has qualification, and so the termination of services of the petitioner is arbitrary, motivated and mala fide.

22. Inasmuch as the contentions raised by Mr. Swatantar Kumar are based upon the judgments of the Supreme Court and the propositions of law laid down by the Supreme Court in Central Inland Water Transport Corporation Ltd., case (supra) Kumari Shrilekha Vidyarthi case (supra) Mr. S. C. Gupta cannot quarrel with the same, as the Supreme Court has intervened and negated contracts or Standing Order which are based upon unequal bargaining power between weaker sections of the society and the instrumentality of the State.

23. If the observations of the Supreme Court relating to weaker sections of the society apply with equal force to the person like the petitioner, then the conclusion has to be that owing to unequal bargaining power of the respondent vis-a-vis an instrumentality of the State, it is not permissible for the respondent to rely upon clause 2 of the offer of employment for the purposes of termination of services of the petitioner.

24. But if the principles enunciated by the Supreme Court are not applicable to a person like the petitioner, then the other principles enunciated by the Court that matters of contract are not amenable to writ jurisdiction of the High Court, must necessarily apply, and the petitioner's writ petition must fail.

25. In this connection, it would be appropriate to recapitulate the observations of the Supreme Court in the Central Inland Water Transport Corporation case (supra), as also in Kumari Shrilekha Vidyarthi case (supra).

26. In the Central Inland Water Transport Corporation case (supra), the Supreme Court was concerned with Rule 9(i) of the Discipline & Appeal Rules of the Central Inland Water Transport Corporation. That rule read as under :-

"9. Termination of employment for acts other than misdemeanour.

(i) The employment of a permanent employee shall be subject to termination on three months notice on either side. The notice shall be in writing on either side. The company may pay the equivalent of three months basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice."

27. The Supreme Court made the following observations in Paragraphs Nos. 91, 92, 104, 107 and 108 : (pp 208-214).

91. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognised, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their

creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, Section 138(2) of the German Civil Code provides that a transaction is void "when a person" exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages which are obviously disproportionate to the performance given in return". The position according to the French Law is very much the same.

92. Should then our Courts not advance with the times ? Should they still continue to cling to outmoded concepts and outworn ideologies ? Should we not adjust our thinking caps to match the fashion of the day ? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories ? Should the strong be permitted to push the weak to the wall ? Should they be allowed to ride roughshod over the weak ? Should the Courts sit back and watch supinely while the strong trample under foot the rights of the weak ? We have a Constitution for our country. Our judges are bounded by their oath" to uphold the Constitution and the laws." The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable clause in a contract entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity 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 situations 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 rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both the parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between persons possessing wholly

disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The Court must judge each case on its own facts and circumstances.

104. It was, however, submitted on behalf of the Appellants that this was a contract entered into by the Corporation like any other contract entered into by in the course of its trading activities and the Court, Therefore, ought not to interfere with it. It is not possible for us to equate employees with goods which can be brought and sold. It is equally not possible for us to equate a contract of employment with a mercantile transaction between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee. As the Corporation is "the State" within the meaning of Article 12, it was amenable to the writ jurisdiction of the High Court under Article 226. It is now well established that an instrumentality or agency of the State being "the State" under Article 12 of the Constitution is subject of the Constitutional limitations and its actions are State actions and must be judged in the light of the Fundamental Rights guaranteed by Part III of the Constitution (see, for instance, Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, The International Airport Authority's case 1979-2-LLJ-217 and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, The actions of an instrumentality or agency of the State must, Therefore, be in conformity with Art. 14 of the Constitution. The progression of the judicial concept of Art. 14 from a prohibition against discriminatory class legislation to an invalidating factor for any discriminatory or arbitrary State actions has been traced in Union of India and Another Vs. Tulsiram Patel and Others, . The principles of natural justice have now come to be recognised as being a part of the Constitutional guarantee contained in Art. 14 In Tulsiram Patel's case this Court said (at page 285) :

"The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs : Violation of rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is violation of the Article 14; Therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The Principles of natural justice, however, apply not only to legislation and State action but also where any Tribunal, authority or body of men, not coming within the definition of "State" in Art. 12 is charged with the duty of deciding a matter."

108. As pointed out above, Rule 9(i) is both arbitrary and unreasonable and it also wholly ignores and sets aside the audi alteram partem rule, it, Therefore,

violates Art. 14 of the Constitutions."

(Italics added).

28. The Supreme Court struck down Rule 9(i) as it ignored audi alteram partem rule, and, Therefore, violated Article 14 of the Constitution.

29. The Supreme Court in Delhi. Transport Corporation (supra) was concerned with the Delhi Road Transport Authority (Conditions of Appointed & services) Regulations, 1952. Regulation 9 read as under :-

"9. Termination of service : (a) Except as otherwise specified in the appointment orders, the services of an employee of the authority may be terminated without any notice or pay in lieu of notice :-

(i) During the period of probation and without assigning any reasons thereof.

(ii) For misconduct,

(iii) On the completion of specific period of appointment.

(iv) In the case of employees engaged on contract for a period on the expiration of such period in accordance with the terms of appointment.

(b) Where the termination is made due to reduction of establishment or in circumstances other than those mentioned at (a) above, one month's notice or pay in lieu thereof will be given to all categories of employees."

30. The Supreme Court by majority dismissed the appeal preferred by the Delhi Transport Corporation against the order of High Court of Delhi, striking down the Regulation as being violative of Article 14 of the Constitution.

31. Mr. Swatanter Kumar refers and relies upon Kumari Shrilekha Vidyarthi case (supra) for the proposition that has been laid down by the Supreme Court that valid reasons must exist for the purposes of justification of the State action, or action of instrumentality of the State. The Supreme Court has held that if the reasons for the exercise of power are not cogent, and do not relate to the object which is sought to be achieved and power exercised in such a way, then exercise of the power will be arbitrary and liable to be struck down.

32. The Supreme Court in that case had further held that the existence of reasons for the action being taken will make the action valid, and non-existence of reasons would make the action taken arbitrary and violative of Art. 14 of the Constitution.

33. Keeping this principle in mind, Mr. Swatanter Kumar contends that the reason which has been given by the respondent for dispensing with the services of the petitioner that a junior officer could look after the job which was being looked after by the petitioner, is no reason at all as the respondent continues to keep the Senior officers on its roll, and keeps on asking qualified persons to apply for jobs for the senior position with the corporation. It is pointed out by Mr.

Swatantar Kumar that the respondent company has continued to advertise for Chief Project Manager's post in connection with the road projects of respondent no. 1, even after the services of the petitioner were dispensed with, and even after his writ petition was filed. One such advertisement has been filed along with the rejoinder, which advertisement, taken out by respondent no. 2, relates to its project of constructions of Mathura Road. By this advertisement, the respondent wanted to receive applications by November 15, 1990 and the appointment which was sought to be made, was that of Chief Manager of it road project.

34. Mr. Swatantar Kumar says that it is not open to the respondent to contend, as it has, that inasmuch as its project on which the petitioner was engaged was over, the employment of the petitioner could be put to end. For this purpose he refers to and relies upon the judgment of this Court, delivered in Civil Writ No. 2941 of 1990 on October 22, 1990 *Kehar Singh v. Electronic Corporation*. In that case, the appointment was for a fixed term also, and the employees were sought to be retrenched because the project was over. This Court quashed the retrenchment orders.

35. Mr. Swatantar Kumar also refers to a judgment of the Supreme Court, reported *Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others*, case. In this case, the employment of the persons who were engaged for carrying on research in the All India Institute of Medical Sciences, were sought to be terminated for the reasons of the project coming to an end. These persons had been working for the purposes of carrying on research for a very considerable time, and they had become averaged for any other employment. The Supreme Court directed continuance of the employment of such employees and gave other directions.

36. Taking an overall view of the principles laid down by the Supreme Court in the case of *Central Inland Water Transport Corporation Ltd. case*, *Delhi Transport Corporation case*, *Dr. V. L. Chandra case*, *Kumari Shrilekha Vidyarthi case* the judgment of this Court in Civil Writ No. 2941 of 1990, Mr. Swatantar Kumar rightly contends that it is no more open to an instrumentality of a State to say that services of its employees can be terminated without assigning any reasons, as has been done in the instant case.

37. Mr. Swatantar Kumar says that keeping in view the principles enunciated in the case of *Delhi Transport Corporation (supra)*, wherein an action of an instrumentality of State, like the Delhi Transport Corporation in having a rule for terminating services without assigning any reason, and the *Central Inland Water Transport Corporation's case (supra)* for terminating services by giving a notice or pay in lieu of notice period, is not permissible any more.

38. Mr. Swatantar Kumar also says that the judgment of the Division Bench of this Court is *Smt. Amarjit Kaur v. Union of India (supra)* has no application to the instant case. That case related to a political appointment, and was of a special kind, and there was something more to that case than merely a matter of

termination of a contract, that the said case is distinguishable from the facts of the present case, inasmuch as in the instant case the requirement of having Chief Project Manager continues, and the petitioner is qualified to hold a job, and that it is not a mere political appointment. I agree that the judgment of the Division Bench of this Court is peculiar to facts of that case, and it has no application to the facts of this case.

39. In my view, keeping in view the proposition of law, which has been laid down with respect to unequal bargaining powers between the instrumentality of the State and the citizens of India, it would not make any material difference whether the power under which termination of services is sought to be affected, is a part of statutory rules, or Standing Order; or is one of the terms of a contract. If the effect is that an instrumentality of State can terminate the contract in the manner it has been done in the instant case, then its action could be termed as nothing else, but arbitrary.

40. It is clear from the facts and circumstances of the case that the petitioner had many years of service left in the Army, when he was attracted by the advertisement of respondent no. 1. That he was suitable person for that job is clear from the fact that he was offered employment; that he performed his functions in various capacities and at various places in India. I do not think it proper that the instrumentality of the State should publish advertisement in the manner as has been done in the instant case, stating therein that initially appointment is to be for a period of 2 years, and thereafter make an offer, by making subtle changes, which are likely to go unnoticed by any person in the letter of appointment, and then say that no matter what representations were made in the advertisement, inviting people to offer their services, because the terms which were offered, have been (subtly) changed, and added to, they have the power to terminate service of a person who has given up a secure tenure. Especially, after he has been assured that the use of the words "initial appointment for two years" was a reflection of company policy, in my view the use of the word "initially" in the advertisement indicates that the appointment is expected to be in the first instance for two years, and contains an implied assurance of continuance. If any person like the petitioner has acted upon such representation, and has accepted the terms offered without a "microscopic scrutiny" of the altered term in the letter of appointment, it would be unfair on the part of the instrumentality of the State of rely upon such a subtle alteration in the terms offered to the detriment of a person like the petitioner. In my view, the principle that in matters of contract this Court will not interfere, would not be attracted in view of breach of Article 14 of the Constitution, to the facts and circumstances of the instance case, and the petitioner would be entitled to continue in service till such time as his services are terminated in accordance with law, or come to an end by superannuation .

41. I do not accept the contention of Mr. S. C. Gupta, learned counsel for the respondents, that the principles of natural justice are not attracted, and will not

apply in cases where the term of duration of employment is fixed. In any event, such a proposition is not applicable to the facts and circumstances of this case. I also do not accept the contention of Mr. Gupta that the principles laid down by the Supreme Court in the Central Inland Water Transport Corporation's case (supra) relating to instrumentality of the State and weak person would not apply to the facts of the present case. As far as the petitioner is concerned in comparative terms, the petitioner is much weaker than the respondent. In any case, the petitioner had to be dealt by the respondent without violating the rules of audi alteram partem.

42. It was suggested during the course of arguments by Mr. S. C. Gupta that there are some kind of charges against the petitioner, and that is why his services were being dispensed with, and that is why resignation letter was written by the petitioner. I do not think there is any substance in this contention, inasmuch as if there were some charges of malpractice, or otherwise, against the petitioner, it would have been appropriate and proper to hold a proper enquiry for finding out whether those charges against the petitioner are established or not, and on proof of those charges, to take such action as could be taken against the petitioner in accordance with law, including dismissal from service.

43. Termination of service of the petitioner, as has been done, appears to be for ulterior motives, and for reasons which are extraneous and undisclosed, and I have no hesitation in quashing the orders dated September 6, 1990 and October 22, 1990, and giving a declaration sought that the petitioner continues in service of the respondent and will continue to remain in service of the respondent till his services are terminated in accordance with law, or until he attains the age of superannuation. The petitioner shall also be entitled to all the consequential benefit with respect to his pay and allowances.

44. This petition, Therefore, succeeds. Orders dated September 6, 1990 and December 22, 1990 are quashed.

45. The petitioner shall also be entitled to his costs, which are quantified at Rs. 2500/-.