

(2019) 06 GUJ CK 0003

In the Gujarat High Court

Case No : R/Special Civil Application No. 10252 Of 2018

Mohini Pessuram Tilwani

APPELLANT

Vs

Union Of India & 4 Other(s)

RESPONDENT

Date of Decision : 24-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 226
National Dairy Development Board Officers. (Conduct, Discipline And Appeal)
Regulations, 1988 — Regulation 3(v)

Citation : (2019) 06 GUJ CK 0003

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Yatin OZA, MN Marfatia, Percy Kavina, DG Chauhan, Ronak D Chauhan

Judgement

N.V.Anjaria, J

1. The captioned petition was finally allowed and disposed of by judgment dated 30th April, 2019. It comes up on board today upon a Note for

Speaking to Minutes dated 20th June, 2019 filed by learned advocate for the petitioner.

2. What is stated in Note is that due to inadvertence the words, 'with the consent of the parties the matter is taken for final hearing' have not been typed in the judgment.

3. Heard learned senior advocate Mr.Yatin Oza with learned advocate Mr.M.N. Marfatia for the petitioner and learned senior advocate Mr.Percy

Kavina with learned advocate Mr.D.G. Chauhan for the respondents in respect of present Note for Speaking to Minutes.

4. On behalf of the respondents, reply was also submitted on the letter-pad by learned advocate for the respondent, stating that Speaking to Minutes

can be filed only if there is clerical or arithmetical mistake in the judgment. According to submissions of learned senior advocate for the respondents

made today, the final hearing did not take place in the petition.

5. Special Civil Application No.10252 of 2018 was posted in accordance with roster. The respondents appeared on their own by caveat through their

advocates. The petition was argued on behalf of the petitioner, by learned senior advocate assisted by learned advocate on record. Respondents

vehemently opposed the petition and the prayers in their submissions and contentions raised by learned senior advocate instructed by learned advocate

on record. The pleadings were completed. The parties submitted to the jurisdiction of the court. Accordingly the petition was finally disposed of.

6. Having regard to the above facts and in that light, the statements and prayer made in the present Note for Speaking to Minutes by the petitioner as

well as opposition/contention raised thereto on behalf of the respondents, both are irrelevant.

7. The present Note for Speaking to Minutes stands disposed of as not liable to be entertained accordingly.

1. By filing the present petition under Article 226 of the Constitution, the petitioner challenges order dated 28th November, 2017 passed by respondent

No.3 terminating services of the petitioner. The further challenge is laid to the order dated 14th February, 2018 whereby respondent No.4 confirmed

the order of termination. The petitioner has sought direction to reinstate her with all consequential benefits, monetary and non-monetary inclusive of

full back wages.

2. The petitioner was initially appointed under respondent No.2 "National Dairy Development Board on 08th November, 2010. The petitioner joined

the National Dairy Development Board (NDDB) as Head of Human Resources Department. It is the case of the petitioner that after two years and

five months of service, looking to petitioner's capabilities, knowledge and experience, petitioner was offered work with respondent No.3 which is a

wholly owned subsidiary of respondent No.2. By letter dated 08th

November, 2010, the petitioner was appointed as Head of Human Resource Department for a period of five years or 60 years of age whichever was

early. The petitioner thereafter came to be appointed on 16th April, 2013 as Senior General Manager (SPD) & Support Services by respondent No.3

which was on emolument of Rs.26.00 lakhs per annum. It is the further case of the petitioner that in recognition of her services, petitioner was posted

as Chief People Officer heading the Human Resource Department and Administration Department by order dated 03rd September, 2015.

3. It is relevant to extract the text of the aforesaid letter dated 16th April, 2013.

â??IDMC/HPD

Managing Director

Sub: Appointment of Ms.Mohini Tilwani

As a part of streamlining of the IMDC's operations, it is felt that we may consider suitable person who can take the responsibility for the following

functions through a group cluster called â??HPD & Support Servicesâ?? comprising:

1. Human Potential Development Group: This will includes major responsibility for implementation of SAP modules like ESS/MSS, Recruitment,

Performance Management System, Travel Management, Training and Event Management in existing SAP HCM at IDMC.

2. Corporate Communications

3. Import & Export

4. Insurance

5. Coordination & Monitoring Cell (C&M)

6. Guest Relations

In the above context, MD has received a letter dated 18th March 2013 from Ms. Mohini Tilwani, Head HRD, NDDB seeking an opportunity to work

with IDMC. She has also obtained consent from Chairman and MD, NDDB.

At present Ms. Mohini Tilwani is working as Head (HRD) with NDDB, Anand since November 2010 and leading all HR activities which includes

recruitment, performance appraisals, policy formulation & reviews, contract labour management, etc. Prior to NDDB, she worked with Ashima Group

as Corporate Head *HRD & IR) and DSS Mobile Communications Ltd., as Regional Head (HDR & Administration). She brings with her 21 years of

experience in the areas of People Management, General Management, HRD & IR. She holds master degree in Labour Welfare, bachelor degree in

Science and Legislative Law and post graduation diploma in HRD.

Therefore as discussed with MD & ED, we propose to appoint Ms. Mohini Tilwani as Senior General Manager (HPD & Support Services) with CTC

of Rs. 26 lakhs per annum.â??

3.1 The aforesaid appointment was upon request of the petitioner and further supported by the consent of Chairman & Managing Director, NDDB.

The letter mentioned about the service background and experience which the petitioner possessed. Her appointment was proposed as Senior General

Manager and the remuneration was fixed at Rs.26.00 lakhs per annum. It was a contractual appointment and the terms of the contract were

communicated to her by letter dated 17th April, 2013. The appointment letter dated 16th April, 2013 did not mention about the contractual nature.

3.1.1 The communication dated 03rd September, 2015 reads as under.

â??Mohini Tilwani

Senior General Manager, HR & Administration

Dear Ms. Tilwani,

Further to the two Office orders dated 13/04/2015 and 16/04/2015, the process of assigning personnel to specific departments, grades, market facing

designations and reporting arrangements has been finalized in convergence with the Performance Management System.

Keeping in view of the above, on behalf of IDMC Limited, I am pleased to forward to you, in duplicate, an offer for a contract of service for a fixed

term. The details of the offer are described in the attachment. Please take time to carefully read the attachment and its annexes, which form a binding

part of the contract.

The Company believes that you have the potential and competency to contribute significantly in enhancing organizational performance and individual

development with a view to achieve IDMC's strategic goals to 2017-18.

We have now transited to the new organizational structure and accordingly you are assigned â??Grade Câ?. Your performance has been reviewed

for the year 2014-15 and you have been rated as â??Outstanding Performanceâ?. You are designated as â??Chief People Officerâ?. Your CTC has

been revised accordingly with effect from 1st April 2015.

May I request you to indicate your acceptance by returning the duplicate copy of the attached contract duly signed on each page by September 11,

2015. Otherwise, this offer will be treated as withdrawn.

With regards

Yours sincerely

sd/- illegible

Anil Shenoi

Executive Director

Enclosures: as above??

3.1.2 By the aforesaid communication, petitioner came to be designated as Chief People Officer and her CTC was revised from 01st April, 2015 in

recognition of her service. The petitioner was communicated on 19th June, 2014 that respondent No.3 was satisfied with her performance and

conduct in IDMC. The petitioner came to be confirmed in service of the company as Senior General Manager with effect from 01st May, 2014.

3.1.3 A separate increment letter dated 19th September, 2014 was also sent to the petitioner stating that petitioner's performance for the year 2013-14

was reviewed based upon her performance and the company's performance. Petitioner was intimated that her performance was rated as outstanding.

Petitioner's performance was rated outstanding also for the Financial Year 2015-16 and CTC was revised for the petitioner which was communicated

to the petitioner by letter dated 27th July, 2016. Similarly, for the Financial Year 2016-17, petitioner was rated with 'exceptional performance' and was

communicated accordingly on 17th August, 2017. All these letters and communications by which the respondent No.3 considered petitioner's

performance outstanding and exceptional and recognised her services with increase in the emoluments, are placed on record of the petition. They are

not disputed by the respondents.

3.1.4 The order of termination was passed against the petitioner on 28th November, 2017. As noted above, on 03rd September, 2015 the petitioner

was communicated that company had found in her potential and competence and her performance was recognised as outstanding and her

remuneration was revised. Communication dated 17th August, 2017 aforementioned in which the petitioner's performance was recognised and

mentioned as exceptional performance for the year 2016-17 was barely before three months from the date of ordering termination.

3.2 Now, the pleadings in the petition extensively narrate the story of petitioner's allegations about the sexual harassment and sexually obnoxious

conduct on part of respondent No.5. The petitioner stated that she did not face any major problems while working under respondent No.3, however

since the time the respondent No.5 became the acting Managing Director and that respondent No.5 was also the reporting officer of the petitioner,

constant harassment including sexual harassment of the petitioner began. It was further alleged by the petitioner that her unfortunate ordeal of sexual

harassment was started when respondent No.5 became acting Managing Director on 28th April,2017. The petitioner has stated that in order to make

the petitioner inferior and to make her uncomfortable, respondent No.5 would harass the petitioner and also made sexual advance.

3.2.1 The petitioner made the following averments and allegations in paragraph 7.5 of the petition.

“... The Respondent No. 5 started to harass the Petitioner by demanding that she remains in office till late hours and the Respondent No. 5

would come to meet the Petitioner in her Office at Unit 4. Thereafter, the Respondent No. 5 would make lewd gestures and signs indicative of his

desire to receive sexual favour from the Petitioner. Since the Petitioner did not accede to the sexual advances of the Respondent No. 5, a strategy

was adopted to either make her bend or break. The Petitioner was not invited to meetings where she was otherwise concerned; she was intimidated in

office by creating such environment of work for her, her day to day activities including her personal life were subjected to stalking and vigil by certain

employees under the instructions of the Respondent No. 5.”

3.2.2 In making the allegations and averments that the personal life of the petitioner was subjected to stalking and was kept under vigil by certain

employees, the petitioner sought to rely on the correspondence and emails which the petitioner received from other employees, for example, at a time

when the petitioner was required to go to hospital to attend her ailing mother, by alleging that all such pursuits and stalking against the petitioner was at

the behest of respondent No.5.

3.2.3 The petitioner in this regard made the following averments in paragraph 7.6 - “... the mother of the Petitioner is 72 years old and is medically

unfit having chronic illness and the Petitioner takes her to the hospital for regular

checkup. That on one such day when the Petitioner had taken her mother for routine checkup, the Petitioner noticed that one of the Petitioner's subordinates, Mr. Hrishikesh Yelgaonkar, Manager HRD was following the Petitioner. The Petitioner submits that when the Petitioner confronted the said subordinate, he informed the Petitioner that he was instructed by the Respondent No. 5 to follow the Petitioner and to update him about her whereabouts. The petitioner was aware that the Respondent No. 5 was jealous of the Petitioner's success and bore a grudge against the Petitioner and more so after the Petitioner rejected the advances of the Respondent No. 5, but the Petitioner never thought that Respondent No. 5 would have the Petitioner stalked. It was alleged by the petitioner that respondent No.5 would use vulgar language and used to get angry if his words were not kept.

3.2.4 The petitioner thereafter narrated the incident of 28th November, 2017 which, according to the petitioner, was the root cause for ousting her from service unceremoniously. It is averred in paragraph 7.12 by the petitioner that petitioner was unwell, however she could not leave since was required to visit the factory plant at chikhodra, Anand. She communicated to all that she shall be visiting the plant at 04.00 p.m. It was stated that Personal Assistant of respondent No.5 intimated the petitioner that respondent No.5 wanted to meet the petitioner at 04.30 p.m. in the office. Petitioner, therefore, cancelled the visit to the factory and went to the office of respondent No.5 at 04.30 p.m. the averments and allegations were made as to the happenings and the discourse that took place by and with respondent No.5 when the petitioner went there.

3.2.5 As to what happened thereafter at that place, petitioner has made following allegations by making averments in the petition,

The Petitioner was thereafter confronted by the Respondent No. 5 who insisted that the Petitioner must hand over her Laptop to him immediately.

The Petitioner submits that the Respondent No. 5 lost his temper (as he is known for his short-temperedness) and abused the Petitioner and grabbed the Petitioner by her hand, attempted to snatch the diary that the Petitioner was holding. In this process, the Respondent No. 5 also touched the Petitioner inappropriately. The Petitioner resisted these attempts, however Respondent No. 5 threatened symbolically to get the Petitioner killed and

the Petitioner, was in extreme shock. The Petitioner then left the office of the Respondent No. 5 in extreme shock and pain.â??

3.3 When the petitioner reached home, she was informed by her juniors that her office cabin was broken. The petitioner thereafter filed a complaint

with Vidhyanagar Police Station on the same date, that is on 28th November, 2017. It is the case of the petitioner that police refused to register the

F.I.R. and simply took the complaint, whereafter the petitioner spoke to the District Collector and Superintendent of Police of Anand District, to

explain her plight. After the intervention of the said higher authorities, police accepted the F.I.R. to register the same at 10.00 a.m. on 29th November,

2017. It was stated by the petitioner that when she was discussing with the police on a previous day and when was in the process of filing complaint,

her services came to be terminated and order dated 28th November, 2017 was issued on the ground that her contractual period was being put an end

to and service was terminated. It is further stated by the petitioner that on 29th November, 2017, as a counter-blast, F.I.R. came to be lodged against

the petitioner at 1845 hours being F.I.R. No.I-172 of 2017 alleging theft of certain material by the petitioner.

3.4 It further appears that the petitioner approached the Chairman, National Commission for Women, New Delhi under the aforesaid Act of 2013. A

formal complaint was also lodged to the Internal Complaints Committee of respondent No.3 on 13th January, 2018.

3.5 The form of the office order dated 28th November, 2017 whereby the petitioner's service was terminated as reproduced below.

â??28 November 2017

HR/13345

OFFICE ORDER

With reference to the Agreement for Contract of service issued to you vide Letter NO. HR 2834 dated 03 September 2015, Ms Mohini Tilwani, Chief

People Office, presently posted at IDMC Vithal Udyognagar is informed that as per clause No. 13 of the aforesaid contract, her services with IDMC

are hereby terminated and she stands relieved from IDMC with effect from 28 November 2017 (after office hours).

Ms Tilwani shall be paid an amount equivalent to three months' basic pay in lieu of three months' notice as per terms of her contract.

This is without prejudice to the right of the Management to recover the dues from Ms Tilwani, if any, as per rules. The full and final settlement shall be effected subject to clearance of No Dues Certificate.

For IDMC Limited

sd/- illegible

Acting Managing Director??

4. The petitioner has submitted that her termination of service was in contravention of the NDDB Officers' Conduct, Discipline & Appeal Regulations, 1988, more particularly Clause 38 thereof which lays down the procedure to be adopted. It is the contention that since the termination of service was punitive, the procedure was required to be followed. The impugned action is also assailed as in violation of Code of Personal Ethics of respondent

No.3 and in breach of Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

4.1 A preliminary contention was raised on behalf of the respondents about maintainability of the petition on the ground that respondent No.3 was not

'State' within the meaning of Article 12 of the Constitution. The vehemence to urge this preliminary objection was confined to the pleadings only. In

course of the oral submissions, this aspect was referred without much assertion by the respondents. The Court has however considered it necessary

and appropriate to survey the decisions on the point.

4.1.1 In *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 22] the Supreme Court inter alia propounded that 'other authorities' contemplated under

Article 12 as State may be for the limited purpose of Parts III and IV and may be bound by the mandates thereof only but are not State within the

meaning and Part XIV or other provisions of the Constitution. In cases of such authorities, writ would lie and authorities would be bound by the

constitutional mandate of fundamental rights enshrined in Part III of the Constitution.

4.1.2 In *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] it was held that a Corporation can be said to be an

instrumentality or agency of the government under certain conditions. Amongst the principal conditions mentioned were that,

â??(1) â??[O]ne thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that

the corporation is an instrumentality or agency of Government.â??

(2) [W]here the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of

the corporation being impregnated with governmental character.â??

4.1.3 In *Mysore Paper Mills Limited v. Mysore Paper Mills Officers' Association* [(2002) 2 SCC 167], the Supreme Court had an occasion to consider

whether the appellant company could be classified as State within the scope of Article 12 of the Constitution. It was held that the concept of State is

not confined to the entities created under or owing their origin to a statute. The test is to identify the real source of its governing power, stated the

Supreme Court. It was held that a particular entity falls within the concept of State, has to be ascertained taking into account the essentiality and

overwhelming nature of the factors like the real source of governing power.

4.1.4 In that case, 97% shareholding of the appellant company was held by the State Government or the financial institution controlled by, and

belonging to the Central Government and the security and undertaking of the State Government and the Directors were either nominees of the State

Government or were elected with the concurrence of the State Government. The Supreme Court held that having regard to these factors together

with other forms of supervision and control, the appellant company was an instrumentality and agency of the State and it was rightly held by the High

Court to be the State.

4.1.5 In *Balmer Lawrie & Co. v. Partha Sarathi Sen Roy* [(2013) 8 SCC 341,]the appellant was subsidiary company of Indo Burmah Petroleum

Company Limited of which 61.8% shares were held by the said Indo Burmah Petroleum Company Limited, a government company. The Supreme

Court found that there was material on record and the Memorandum of Articles of Association of the appellant company which made it abundantly

clear that it was a subsidiary of IBP which was also a government company. The Supreme Court held the company to be within the purview of

Article 12 by recording a finding that the test of pervasive control was satisfied.

4.1.6 It was observed, â??the concept of an instrumentality or agency of the government is not limited to a corporation created by a statute, but is

equally applicable to a company or to a societyâ?. It was stated that in a given case the Court must decide whether such a company or society is an

instrumentality or agency of the government so as to determine whether the same falls within the meaning and expression 'authority' as mentioned in

Article 12 of the Constitution.

4.2 It was not disputed that NDDB â?" respondent No.2 is a State authority within the ambit of Article 12 of the Constitution. Respondent No.3 is

wholly owned subsidiary. 100% share capital of respondent No.3 is held by respondent No.2. In the NDDB Regulations, 1988 as amended by NDDB

Officers' (Conduct, Appeal and Discipline) (Amendment) Regulations, 2002, respondent No.3 â?" Indian Dairy Machines Company Limited is added

for the purpose of definition of subsidiary company in Regulation 3(v) of the Regulations of 1988. 100% shareholding by the NDDB and the attendant

aspects are suggestive of deep and direct control of respondent No.2. It is not disputed that as per the Articles of Association of respondent No.3,

respondent No.2 has right to appoint Board of Directors of respondent No.3. The Article of Association of respondent No.3 company is on record.

The right to appoint Board of Directors also indicative that respondent No.2 is able to exercise control over the affairs of respondent No.3.

4.2.1 In view of all these aspects, through respondent No.3 poses with a private character in the first blush,, on lifting the veil, it could be reasonably

concluded that respondent No.3 is a extension of respondent No.2. An organ of State authority also becomes a state. Therefore, respondent No.3 is

bound by the tenets and mandates of Article 14 of the Constitution to act in just, fair and non-arbitrary manner in all its functional spheres and in all

decisions including the treatment to be meted out to its employees, servants and officers.

4.3 Learned senior advocate Mr.Yatin Oza assisted by learned advocate Mr.M.N. Marfatiya submitted that the decision taken by respondent No.3 to

terminate the services of the petitioner was an off-shoot and was counter-blast to the complained filed by the petitioner in respect of alleged sexual

harassment from respondent No.5 to her. Learned senior advocate for the petitioner extensively referred to the email correspondences between the

petitioner, respondent No.5 and the other employees of respondent No.3 to try to establish that the petitioner was being subjected to sexual

harassment. He emphasised and elaborated the aspect that the petitioner's service tenure either under the NDDB or under the instrumentality by

NDDDB â?" respondent No.3 was highly appreciated, but within a short-span, order of terminating her service came to be passed. According to learned senior advocate though the order was styled as contractual termination of service, it was based on different considerations. It was submitted that the order was passed as a punitive measure, which could not have been passed without compliance of principles of natural justice and holding of a full-scale inquiry.

4.4 On the other hand, learned senior advocate Mr.Percy Kavina assisted by learned advocate Mr.D.G. Chauhan submitted that the petitioner was appointed on contractual basis and as per the conditions of contract, her services were put an end to. According to them, in respect of termination of personal contract of service, a writ petition would not lie and if the petitioner felt aggrieved, the remedy for her was on the civil side. It was submitted that the reading of the order of termination clearly showed that the termination was in the nature of the end of contractual arrangement and nothing more. It was submitted that when there was no basis, it was not permissible for the petitioner to connect any other event with the order passed. It was submitted that the outstanding performance rated for the petitioner could not be a debarring factor for the employer for put an end to the contract. In the affidavit-in-reply filed by respondent Nos.3 and 5, was relied on, in which the case of the petitioner was totally denied and it was reiterated that the action was based on the conditions of the contract under which the petitioner was appointed.

4.5 Noticeably, the allegations were made against respondent No.5 personally in respect of sexual harassment by him to the petitioner. Respondent No.5 happens to be the Managing Director and also arraigned in that capacity as respondent No.3. The affidavit-in-reply came to be filed in common stating the same to be on behalf of respondent Nos.3 and 5, though respondent No.5 was supposed to file a separate affidavit to properly answer and take stand with regard to the allegations levelled personally against him. Be that as it may. At the same time, while putting up the case in the petition, petitioner has specifically averred that in view of the allegations against the respondent No.5 â?" Managing Director, he is also made party in individual capacity as respondent No.5. The relevant averments reads as under. â??The Petitioner submits that since serious charges of misconduct, malafides

and sexual harassment have been made against Mr. Rajesh

Subramaniam, the Managing Director of the Respondent No. 3 herein. Therefore Mr. Rajesh Subramaniam, in addition to being joined in the present

proceedings in his capacity as Managing Director of the Respondent No. 3 has been added as party to the present proceedings by name as

Respondent No. 5.â??

4.6 Though respondent No.5 is also joined in his individual capacity, the affidavit-in-reply is filed in common to be of respondent No.3 and respondent

No.5 together, mixing up the legal capacities. The respondent No.5 arraigned to be respondent No.3 as Managing Director and arraigned to be

respondent No.5 in his individual capacity, have two different roles to play in eye of law in defending his case. Record indicates that even respondent

No.5 has not chosen to file appearance in his personal capacity as respondent No.5, since respondent No.5 is shown to be served but nobody is

appeared.

5. From the facts, pleadings and the rival submissions noted hereinabove, two aspects emerged to be focused for the court's decision. Stated broadly,

one facet of controversy is whether the termination was based on the consideration other than what was made to manifest in the context of the

termination order. The second aspect is that what prompted the respondent â?" employer to act adverse to the petitioner within a span of few months

when the respondent No.3 had itself consistently assessed the petitioner's performance to be outstanding and exceptional and had expressly

recognised the utility of the expertise of services of the petitioner. Both these aspects became interactive in view of the levelling of allegations by the

petitioner about sexual harassment to her and the attendant events.

5.1 At the outset, it may be stated that the petitioner has, in her pleadings, put up extensive averments and allegations in relation to the alleged sexual

harassment caused to her by private respondent No.5 herein who was the acting Managing Director. It has to be observed that in appreciating the

various contentions on merits of both the sides in respect of the impugned order of termination, it is not necessary to undertake the exercise of finding

of truth or otherwise in the allegations. Nor such exercise can be undertaken in the writ jurisdiction.

Nor it is in any way relevant. The Court has not at all gone into the veracity or

otherwise of the allegations regarding sexual harassment to the petitioner. The Court also does not express any opinion on that count while judging the legality of the order of termination. What is relevant is whether the allegations about the sexual harassment even when they remain in the realm of allegations only, were in the root or in the foundation of taking action of passing the termination order against the petitioner.

5.2 Recollecting the admitted facts which are stated about the quick progress which the petitioner achieved in her career after joining the respondent

No.3, and the stance of respondent No.3 in profusely praising the work and the efficiency of the petitioner and in giving her the enhanced emoluments, those events were as under, which took place within the short period which immediately preceded the order of termination dated 28th November, 2017.

(i) Reading the contents of the appointment order dated 16th April, 2013, it could be easily culled out that respondent No.3 wanted to improve upon its affairs and functioning and wanted a person with expertise to perform the work mentioned in the appointment letter. The services of the petitioner who was then working under respondent No.2 " NDDDB was solicited for respondent No.3 which was an organ of respondent No.2. It appears that by way of such arrangement, petitioner was employed. The petitioner was offered what is called Cost to the Company (CTC) at Rs.26.00 lakhs.

(ii) It further becomes clear that respondent No.3 found the working of the petitioner to be outstanding. Petitioner came to be given the post of Chief People Officer and petitioner's CTC was increased to Rs.37,67,091/- on 03rd September, 2015.

(iii) Though in the said letter, word 'promotion' is not used, the submission of learned senior counsel for the petitioner could not be brushed aside lightly that it was an upward recognition of the petitioner and her performance was rewarded.

(iv) The events thereafter only underline that the petitioner's work was assessed to be in the realm of excellence. On 27th July, 2016, respondent No.3 rated the work of the petitioner to be outstanding and again the CTC of the petitioner was increased to Rs.43,32,146/-.

(v) On 17th August, 2017 petitioner was given the rating of exceptional performance. At this stage also, her CTC was increased to Rs.48,52,009/-.

5.3 Thereafter the termination order was passed on 28th November, 2017 which was immediately after passage of few months. The quick sequence of events was unfathomable in view of the background facts of rating the petitioner high for her exceptional performance, increasing her salary virtually double within months and taking note of the services rendered by the petitioner and even by giving her elevated placement and terminating the services abruptly then-after. If these facts are measured by the principle of wednesbury reasonableness, the conduct on part of the respondent No.3 was incomprehensible, both in terms of rationality in action and proportionality in taking the decision to terminate the services of the petitioner.

5.4 In GRIDCO Limited v. Sadananda Doloi [AIR 2012 SC 729] the Supreme Court observed that with the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of termination order passed by public authority. It was stated that it is no longer open to the authority passing the order to argue that different action being in the realm of contract is not open to judicial review. It was further observed by the Apex Court that a writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract.

5.5 In recent decision in M/s.Surya Constructions v. The State of Uttar Pradesh being Civil Appeal No.2610 of 2019 decided on 08th March, 2019, the Supreme Court stated the following principle.

“Equally, it is well settled that where the State behaves arbitrarily, even in the realm of contract, the High Court could interfere under Article 226

of the Constitution of India [‘ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. [(2004) 3 SCC 553]”.

5.6 When the affidavit-in-reply on behalf of respondent Nos.3 and 5 filed in common, was seen, there was a total dearth of defence on the aforesaid

score, as to what led the employer to suddenly terminate the services of the employee who, in the near past, was highly acclaimed for her efficiency in

discharge of duties and was elevated in terms of remuneration and status. In paragraph 16 of the affidavit-in-reply, it was averred, “the working of

the petitioner as was concluded after receiving several and continuous feedback from the employees/staff, was not compatible with the position she

was engaged in, particularly with regard to smooth employee-employer relation which was marking the business of the respondent No.3. It was

similarly stated in the affidavit elsewhere that working of the petitioner, as was concluded after having received several and continuous feedback from

the employees, was not compatible with the position of the petitioner she placed, in particular with regard to smooth employee-employer relations

which impacted the working environment.

5.7 When the petitioner's services was recognised as outstanding and exceptional, when she was elevated in terms of placement and position and

when her emoluments was sizeably enhanced in recognition of her performance, the above stand on part of respondent No.3 could hardly be

countenanced. The aforesaid averments were bare averments without supported by any material, rather the attendant facts and circumstances

suggested a situation quite contrary. Learned senior counsel for the petitioner could rightly describe the aforesaid defence on part of the respondent as

a figment of imagination to submit that no such feedback existed.

5.8 The whole defence was sham and was raised for the sake of raising. As already noticed, even in terms of time-leg, there was a close proximity

between the recognition and apprehension for the services of the petitioner on one hand and the abrupt order of termination on the other hand. Both

did not have any conceivable cause and effect relationship. If at all there was any nexus, it was in terms of arbitrariness.

5.9 More importantly, the above circumstances were not the stand-alone circumstances. It had backdrop of serious allegations of sexual harassment

spread over past few months, by the petitioner by highly placed employee of respondent No.3. The petitioner filed a criminal complaint alleging about

harassment of such nature. It would be seen that the petitioner in her pleadings narrated by alleging events which took place on 28th November, 2017

in the office of respondent No.5 which were followed by filing a criminal complaint by the petitioner on 28th November, 2017. Passing of termination

order coincided with the said date, that is 28th November, 2017, as it was passed on the same day. On behalf of the petitioner, it was highlighted from

the facts that passing of the order of termination by respondent No.3 was a simultaneously undertaken exercise when the petitioner was busy

struggling to get her complaint registered with the police station. The termination

order was passed on the same day and the amount of three months'

salary in lieu of the notice was credited in the account of the petitioner directly without her knowledge.

6. All the above facts and events as obtained cumulatively, created a strong foundation on which the termination order was shown to have been

erected. The foundational factor, even if circumstantial in nature, was too strong to resist a conclusion that it was a retaliatory act. Such was a

reasonable and inescapable conclusion in the facts and circumstances of the case. There was much more than what met the eyes in the termination

order. Though passed by styling it a contractual termination, the order clearly appeared to have been guised under different facts and foundation.

6.1 The order of termination has to be held arbitrary and in violation of the tenets of Article 14 of the Constitution. It was a punishment inflicted on the

petitioner in disguise of contractual termination which was by throwing to the winds even the bare minimum principles of natural justice. The

arbitrariness, whenever and wherever exists, by its very nature, writs large.

7. In light of above facts and circumstances and the reasons supplied, petitioner deserves the relief prayed for. Order dated 28th November, 2017

passed by respondent No.3 terminating the services of the petitioner as also order dated 14th February, 2018 passed by respondent No.4 confirming

the order of termination, both are hereby set aside. The petitioner shall be reinstated in service on same terms and in the same status and the

consequential monetary benefits/remuneration for the interregnum shall be paid to her within four weeks from today.

(N.V.Anjaria, J)

FURTHER ORDER

At this stage, learned advocate Mr.D.G. Chauhan for respondent Nos.2 to 4 requested that above judgment and the directions may be stayed in order

to enable the respondents to approach the higher forum. Learned advocate for the petitioner objected to the prayer.

In the facts and circumstances of the case, the directions issued hereinabove regarding reinstatement of the petitioner and payment of monetary

benefits/remuneration to her shall remain in abeyance for a period of four weeks from today.