

(2008) 04 OHC CK 0056
In the Orissa High Court
Case No : W.A. No. 11 of 2003

Sadananda Doloi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16(1), 19(1)

Citation : (2008) CLT 561 Supp

Hon'ble Judges : A.K. Ganguly, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Advocate : G.A.R. Dora, G. Rani Dora and J.K. Lenka, for the Appellant; N.C. Panigrhi, for Caveator R.5, S.C. Dash, G.S. Dash, N.K. Tripathy, D. Tripathy and S.R. Panigrahi, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, C.J.—This writ appeal has been filed by Sadananda Doloi, the writ Petitioner, challenging a judgment and order dated 26th September, 2003, passed by the learned Judge of the writ Court. By the said order the learned Judge upheld the order dated 19.2.2001 whereunder the Petitioner's services were terminated by the GRID Corporation of Orissa Ltd. (hereinafter called "GRIDCO").

2. The material facts of the case are:

The Appellant claims to have passed P.G.D.M. of two year course from Indian Institute of Management, Calcutta, which is a qualification equivalent to MBA, of two-year course from Indian Institute of Management, Calcutta. He also passed LL.B, from Utkal University. In a campus selection the National Thermal Power Corporation (NTPC) selected him as Personnel Officer where he joined on 7.5.1981. While continuing in NTPC, in response to an advertisement, the Appellant applied for the post of D.G.M. (P.A.) in Mining and Allied Machinery Corporation (M.M.C.) which is a Government of India Undertaking. There is a

selection made in December, 1990, the Appellant was selected and joined M.A.M.C. immediately. He was on probation for one year and on satisfactory completion of probation, he was confirmed. Then GRIDCO issued an advertisement dated 28.5.1996 vide Annexure-1 published in Economic Times (Calcutta Edition) for filling up two posts of Sr. General Manager (HRD) and Sr. G.M. (Man Power) in E-9 grade. As the Appellant had the required qualifications and 15 years experience, including 5 years experience in a Senior position in a reputed organization, he applied. The Appellant passed the written test and thereafter the Selection Committee consisting of the C.M.D., GRIDCO, Principal Secretary, Energy Department, Government of Orissa and two other external experts interviewed the Appellant along with other candidates and the Appellant was selected. The Appellant thereafter joined in the post of Senior General Manager (HRD), GRIDCO on 30.4.1997.

3. The Appellant contended that as per the salary structure of GRIDCO Service Regulation 1996, the scale of pay of Sr. General Manager was Rs. 4800-6300/- and that was for "E-9" grade post. The scale of pay of Chief General Manager, which is in "E-10" grade was in the scale of Rs. 5100-6500/- and the Appellant was appointed Senior General Manager, but then he was re-designated as Chief General Manager (HR) and the scale of pay of the Appellant was shown as Rs. 5100-6500/-. This was done by an office order of the GRIDCOG on 23.6.1997. The order of appointment of the Appellant is dated 6.2.1997. In the said appointment letter, there was a column under the heading "period", and the following recitals were made.

The tenure of appointment as Sr. General Manager (HRD) is for a period of three years on contract basis subject to renewal on the basis of your performance. This contract of employment is, however terminable even during this three year term on three months" notice or on payment of three months salary in lieu thereof by either side.

In Clause 12 of the said appointment letter, it was made clear that the Petitioner will be governed by the Grid Corporation Officers Service Regulations, 1996. The said Regulation came into effect from 1.4.1997, but the Petitioner's appointment letter is dated 6.2.1997.

4. However, after getting the appointment letter dated 6.2.1997 the Appellant made a representation on 29.10.1997 stating therein that there is no mention of contract in the advertisement which was issued by the GRIDCO in the Economic Times dated 28.5.1996 and pursuant to which the Appellant applied. The said representation has been disclosed in the writ petition. The Appellant's prayer in the said representation was that the aforesaid para-2 of the appointment order may be amended in conformity with para 13(3) of the Grid Corporation Officers Service Regulations, 1996 (hereinafter called the "said Regulations"). After the said representation was made, Appellant was informed by a communication dated 29.10.1997 issued by the Asst. Manager (HR) to the effect that CMD has approved the amendment of para-2 of the Appellant's appointment letter dated

6.2.1997 and the said amendment is as follows:

(2) Period - Your tenure of appointment shall be on a contract basis initially for a period of three years and renewable thereafter for such period(s) as the Board or the Committee of the Board may prescribe until you attain the age of superannuation as provided in the GRIDCO OFFICERS SERVICE REGULATIONS. This contract of employment is, however, terminable even during this three year term on three month's notice or on payment of three months' salary in lieu thereof by either side.

(underlined for emphasis)

After initial expiry of the period of three years, the Appellant's services were extended from time to time. The first extension was given for a period upto 3.11.2000 on the same terms and conditions as stipulated in the appointment letter as amended and the Appellant was communicated about the same on 29.3.2000 by the GRIDCO. Then, it was further extended for one year upto 3.11.2001 on the same terms and conditions and the Appellant was communicated by the GRIDCO on 1.11.2000.

5. Attention of this Court was drawn to the Minutes of the 16th Meeting of HRD Committee held on 25.10.2000 and in the said meeting, the CCRs of the Appellant Upto 1999-00 were perused and it appears that "very good" remark was given except from 1.11.97 to 31.3.1998 for which the Appellant has been rated as "good". Considering the performance of the Appellant during his tenure and the requirement of the Corporation, the Committee unanimously decided to extend the contract of appointment for a further period. It was also noted in the said meeting that regarding the period of extension there was no consensus amongst the members of the Committee and in the absence of unanimity, it was decided that the matter may be placed before the CMD for a decision. In the 16th meeting of HRD Committee dated 25.10.2000, the question of extension of the tenure of appointment of the Appellant was discussed and the Director (Engineering) and Director (Commercial) expressed that the service tenure of the Appellant can be extended upto the age of his superannuation in case there is no technical/legal restriction for the same. In case there is any such bar, then the service tenure of the Appellant may be extended for a further period of three years. But the Director (HR) and Director (Finance) were of the opinion that the tenure period of service should not be extended beyond one year. The period of extension of service upto 3.11.2001 was communicated to the Appellant by a communication dated 1.11.2000. Thereafter, within the extended period of service the impugned order of termination dated 19.2.2001 was issued to the Appellant and he was relieved from the office of the GRIDCO from 19.2.2001. Alongwith the said letter, a cheque of Rs. 73,485/- was sent to the Appellant towards payment of three months' salary in lieu of three months' notice. The aforesaid order was the subject matter of challenge in the writ petition before this Court.

6. In the counter affidavit which was filed before the learned Judge of the Writ Court, the stand taken by the GRIDCO is that the Appellant's appointment is purely contractual and the Appellant has no right to the post and the Appellant on those terms joined the post on 30.4.1997. It is also stated that the services of the Appellant was terminated in accordance with the terms and conditions stipulated in the order of appointment and it was termination simpliciter without any stigma and the same also does not visit the Appellant with any evil consequences. The Appellant is not entitled to invoke Article 311(2) of the Constitution and the order of termination was not passed by way of punishment.

7. On those facts, learned Judge of the writ Court in the impugned judgment held that the Petitioner's case is squarely covered by Sub-clause (iii) of Clause (h) of Regulation 44(2) of the Regulations and the Petitioner's service can never be said to be in any way better than a contractual appointment and purely temporary in nature. Learned Judge also held that the termination of service of the Petitioner is an order simpliciter and in terms of the letter of appointment as amended and which was accepted by the Petitioner. In view of those facts, the ratio of the decision cited by the Petitioner in the case of Jagdish Mitter Vs. The Union of India (UOI), , does not apply. Learned Judge of the writ Court also referred to the decision of the Supreme Court in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , where it was held that a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and terms of contract of service. As such, learned Judge of the writ Court by the impugned order held that the order of termination is an order on innocuous terms and does not cast any stigma on the Petitioner and is not founded on misconduct. Learned Judge also recorded that the allegation of mala fide made by the Petitioner was without any basis and therefore dismissed the writ petition.

8. Before going into the question of law which cropped up in this case, the Court has to keep in mind that the appointment of the Appellant was on the basis of a regular selection procedure. The Appellant had to face written test and thereafter an interview by the Selection Committee consisting of external experts and the Appellant succeeded in that selection test. The appointment of the Appellant was never on probation.

9. In the course of hearing before the appellate Court a question cropped up which goes to the root of the matter. The question is whether GRIDCO which is admittedly a State within the meaning of Article 12 of the Constitution of India can make contractual appointment, even if such contractual appointment is provided in its Regulations. The Regulations which have been referred to in this case are not statutory Regulations. Those Regulations are merely approved by the Board of Directors of the GRIDCO. But one fact which cannot be lost sight of is that in framing the Regulations, the GRIDCO, a "State" under Article 12, cannot act contrary to the Constitutional mandate under Articles 14 and 16 of the Constitution.

10. This question was raised from the Bench and the learned Counsel for the parties were given notice of the same and learned Counsel for the parties were invited to argue on the same.

11. The status of a Government employee after his appointment came up for consideration for the first time in the case of Roshan Lal Tandon Vs. Union of India (UOI), In that judgment a Constitution Bench of the Hon"ble Supreme Court authoritatively laid down that the origin of Government service is contractual there being an offer and acceptance in every case. But once a Government servant is appointed to his post or office, the Government servant then acquires a status and his rights and obligations are no longer determined by consent of the parties, but by statute or statutory rules which might be altered unilaterally by the Government. (See para 6 at pages 1894-95 of the report).

12. Of course the Appellant is not a Government servant, but it cannot be denied that he is not an officer or employee of a statutory Corporation within the meaning of Article 12 of the Constitution. The status of an employee of a statutory Corporation also came up for consideration before the Constitution Bench of the Hon"ble Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , to which reference will be made later.

13. In O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , the question which came up for consideration is whether a rule or regulation, framed by a public sector undertaking, or a State under Article 12, empowering the employer to terminate the services of a regular employee by giving notice of the prescribed period or payment of salary for the notice period in lieu of such notice is constitutional. This question which was framed in paragraph-1 of the judgment has been answered in paragraph-4 thereof holding, inter alia, that such a rule cannot coexist with Articles 14 and 16(1) of the Constitution of India. It was held that such a rule which permits the Corporation to terminate the services of regular employees by giving notice as prescribed in the contract of services must die, so that the fundamental rights guaranteed under Articles 14 and 16 of the Constitution may remain alive.

14. The rationale behind the said conclusion has been explained by the learned Judges as follows:

For, otherwise, the guarantee enshrined in Articles 14 and 16 of the Constitution can be set at naught simply by framing a rule authorizing termination of an employee by merely giving a notice. In order to uphold the validity of the rule in question it will have to be held that the tenure of service of a citizen who takes up employment with the State will depend on the pleasure or whim of the competent authority upguded by any principle or policy. And that the services of an employee can be terminated even though there is no rational ground for doing so, even arbitrarily or capriciously. To uphold this right is to accord a "magna carta" to the authorities invested with these powers to practice uncontrolled discrimination at their pleasure and caprice on considerations not

necessarily based on the welfare of the organization but possibly based on personal likes and dislikes, personal preferences and prejudices. An employee may be retained solely on the ground that he is a sycophant and indulges in flattery, whereas the services of one who is meritorious (but who is wanting in the article of sycophancy and temperamentally incapable of indulging in flattery) may be terminated. The power may be exercised even on the unarticulated ground that the former belongs to the same religious faith or is the disciple of the same religious teacher or holds opinions congenial to him. The power may be exercised depending on whether or not the concerned employee belongs to the same region, (religion) or to the same caste as that of the authority exercising the power, of course without saying so. Such power may be exercised even in order to make way for Anr. employee who is a favourite of the concerned authority. Provincialism, casteism, nepotism, religious fanaticism, and several other obnoxious factors may in that case freely operate on the mind of the competent authority in deciding whom to retain and whom to get rid of. And these dangers are not imaginary ones. They are very much real in organizations where there is a confluence of employees streaming in from different states. Such a rule is capable of robbing an employee of his dignity, and making him a supine person whose destiny is at the mercy of the concerned authority (whom he must humour) notwithstanding the constitutional guarantee enshrined in Articles 14 and 16 of the Constitution of India. To hold otherwise is to hold that the fundamental embedded in Articles 14 and 16(1) is a mere paper tiger and that it is so ethereal that it can be nullified or eschewed by a simple device of framing a rule which authorizes termination of the service of an employee by merely giving a notice of termination. Under the circumstances the rule in question must be held to be unconstitutional and void.

15. The Court also referred to the other judgments of the Supreme Court in the case of West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, , where similar regulation has been struck down by the Supreme Court as totally arbitrary and capable of vicious discrimination. The Hon''ble Supreme Court went to the extent of saying in Desh Bandhu Ghosh that such hire and fire rule and parallel of which was found in Henry VIII clause should be banished altogether from employer-employee relationship. It was held in Desh Bandhu Ghosh that such rules offend Article 14 of the Constitution of India and are to be struck down on that account.

16. Similar principles were laid down by the Hon''ble Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , by striking down similar regulation as being violative of Article 14 of the Constitution of India inasmuch as it was capable of being selectively applied in a vicious manner by pick and choose formula.

17. Then came the decision of the Constitution Bench of the Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . Hon''ble Mr. Justice B.C. Ray who delivered the majority opinion in the

said case relied on the judgments of the Supreme Court in O.P. Bhandari and in Central Inland Water Transport Corporation Ltd. After relying on those judgments, the learned Judge in para 199 at page 166 of the (sic) held that Government Company or Public Corporation being State instrumentalities are State within the meaning of Article 12 of the Constitution and as such they are subject to the observance of (sic) rights embodied in Part III as well as to conform to the (sic) principles in Part IV of the Constitution. Saying so, the learned Judge further held that the service Regulations or Rules framed by them are to be tested on the touchstone of Article 14 of the Constitution. The learned Judge held that there is no guidelines in the Regulations or Rules as to when or in which cases the power of termination can be exercised under Rule 9(b) which confers arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons.

18. Hon''ble Mr. Justice Sawant, who also concurred with Justice Ray on the interpretation of the Rules had set out the relevant Rule 9 which runs 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 specific 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.

19. On a perusal of the aforesaid Rule, it is clear that contractual appointment was also a part of the rule.

20. Learned Judge held in paragraph-223 of the said judgment that there is a need to minimize the scope of the arbitrary use of power in all walks of life. Learned Judge further held that it is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. After reaching the aforesaid finding, the learned Judge went on to hold that the employment under the public undertakings is a public employment and a public property and it is not only the undertaking but it is the society at large which has a stake in the proper and efficient working of such undertaking. Learned Judge also made the following observation at page 173 of the report.

Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and

secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

21. Mr. Justice K. Ramasway, who also concurred with the majority in paragraphs 235, 236, 237, 238, 239 and 240 discussed the right of an employee working under an Authority under Article 12 of the Constitution of India. His Lordships held that such an authority cannot act free like an ordinary master. After an exhaustive discussion of various case laws, learned Judge came to the following conclusions:

It is thus, I hold that the employees of the corporations, statutory authority or instrumentality under Article 12 have statutory status as a member of its employees.

It is, therefore, clear that an employee of an authority which is a State under Article 12 has a statutory status in connection with employment and the said employment has the attributes of public employment and such an employment must receive its succour and nourishment under the canopy of the protective umbrella of Articles 14, 16(1), 19(1)(g) and 21 of the Constitution. No regulation, far less a non-statutory regulation like the Regulations of GRIDCO can arbitrarily take away or abridge or abrogate these rights.

22. Therefore, going by the aforesaid principle, the Court must examine the constitutional validity of the Service Regulation under which the Petitioner's employment is sought to be treated as merely contractual. The fact that the Petitioner accepted his appointment on such terms is of no consequence. This has been dealt also in the judgment of Justice Ramaswamy in paragraph-246 of the Report in Delhi Transport Corporation. In paragraph-246 at page 190 of the Report, learned Judge held as follows:

This Court, as a Court of Constitutional conscience enjoined and is jealously to project and uphold new values in establishing the egalitarian social order. As a Court of constitutional functionary exercising equity jurisdiction, this Court would relieve the weaker parties from unconstitutional contractual obligations, unjust, unfair, oppressive and unconscionable rules or conditions when the citizen is really unable to meet on equal terms with the State. It is to find whether the citizen, when entered into contracts or service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position of either to take it or leave and if it finds to be so, this Court would not shrink to avoid the contract by appropriate declaration. Therefore,

though certainty is an important value in normal commercial contract law, it is not an absolute and immutable one but is subject to change in the changing social conditions.

23. The following position, therefore, emerges from a conjoint reading of the principles laid down in various decisions of the Supreme Court discussed herein above.

(a) Service under the Government, except at the initial stage of entry, is not a matter of contract between the employer and employee. It is a question of status which the Government servant acquires in view of various Rules and Regulations which control the relationship between an employer and employee. Such Rules, however, can be unilaterally changed by the Government.

(b) The same position as in (a) also obtains in matters of employment under a State or statutory corporation which is an authority under Article 12 of the Constitution. In an employment under authority or corporation it is not only the interest of employee or employer which is involved, but the whole society has a stake. Therefore, public element is involved in an employment under the State and it has a public character.

(c) The GRIDCO, an authority under Article 12 of the Constitution is bound by the mandate of the Part III of the Constitution and has to frame its regulations in consonance with principles of Article 14 and 16 of the Constitution. Even if such regulations are not statutory, as in the present case, they have to abide by the principles of Article 14 and 16 of the Constitution. In other words, validity of any action on the basis of the service regulations has to be decided on the touchstone of the principles which emanate from Article 14. Therefore, such regulations, even if not statutory, must be fair and reasonable and must be in conformity with Part-III and Part-IV of the Constitution.

(d) Assuming an employee or an Officer has accepted employment on contractual terms of hire and fire offered by such Corporation or authority but that does not clinch the issue. An employee normally has to accept the terms of employment in view of his unequal bargaining power. Just because he has accepted the service conditions it does not mean that the same cannot subsequently be challenged by him. An employer of a State under Article 12 cannot barter away his fundamental rights when he accepts regular employment on terms, which are opposed to Constitutional norms.

24. Keeping these principles of mind, it is difficult for this Court to uphold the stand of the opposite parties that in the instant case the termination of service of the Petitioner can be sustained under Regulation 44(2)(h)(iii) of the GRIDCO's Officers Service Regulations. The very concept of a regular appointment, which has been made pursuant to a public advertisement after a proper selection, being contractual in nature, is opposed to the principle of public service under the State.

25. It is no doubt true that the Petitioner's appointment initially was in Executive Grade E-9. It is also true that in the advertisement, which was issued by GRIDCO, pursuant to which the Petitioner responded and was appointed, there was no mention of a contract. In the Service Regulations which have been framed by GRIDCO and on which GRIDCO is relying, there is no provision for a contractual appointment in respect of Executive Grade E-9. The provision for contractual appointment is only made in respect of appointment to Executive Grade above E-9. This is clear from the Clause 13 of the said Regulations. Therefore, the insertion of Clause 2 in the appointment letter of the Petitioner, whereby the contractual terms has been incorporated is not only dehors the aforesaid Regulations but also is outside the scope of the advertisement.

26. Contractual appointment by Government or State can be made only in certain limited situations where such appointments were made without proper advertisement or without an proper selection process and on purely temporary basis under a scheme or for a limited period, as in the case of State of Gujarat and another Vs. P.J. Kampavat and others, In that case appointment was made by the Government of Gujarat and it was thought expedient to permit the Chief Minister and other Ministers to appoint persons of their choice in their respective establishments. Such appointments were coterminous with the tenure of the Minister's establishment and such appointment orders state the appointees shall not get any right for absorption in the regular cadres. No selection procedure was followed in such cases, namely there was no public advertisement and no selection test and interview. In such a situation the Government can make purely contractual and temporary appointment in the exigencies of public service. But here the Petitioner's case is not like that.

27. Similarly persons, who are employed under any temporary scheme also are the contractual appointees. Such scheme like Jawahar Rozgar Yojna was formulated for giving work to the poor during the period when they are without any source of livelihood and without any income. Appointment under such scheme is obviously temporary in nature and persons appointed under such scheme cannot claim regularization (See the decision of the Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . Obviously the Appellant's case cannot be compared to that. Similarly in the case of Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , the Hon''ble Supreme Court held that appointment made on purely contractual and on ad hoc basis on a consolidated pay for a fixed period is terminable without notice. Such appointment was made on a consolidated fixed compensation of Rs. 1,260/- per month on a contract basis for a period of three months. It is obvious that Appellant's case cannot be compared with such appointments.

28. The Appellant's appointment is by an authority under Article 12 of the Constitution, after following a proper selection procedure, and on the basis of a public advertisement. In such a case, the so called freedom of contract in

matters of appointment is rendered illusory by the unequal bargaining power when a citizen under the Public Service in one hand is pitted against a giant employer like the opposite parties. In such a situation an employer has no option but to accept or reject the terms offered. Considering these facts the apex Court has ruled that in cases of appointment which have been after going through the entire gamut of the selection procedure, security of tenure must be ensured. Introduction of contract in such an appointment is against public policy inasmuch as it destroys the security of tenure. The Court has characterized such contracts as "contract of adhesion" offered on a "take it or leave it" basis and without affording the other party a "realistic opportunity to bargain" See Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, .

29. After discussing the principles of Article 14 of the Constitution, learned Judges in Brojo Nath held:

...This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power...(See para 90 at page 1610-1611 of the report).

In the instant case the element of contract was purported to be introduced in the offer of appointment given to the Petitioner, but there is no provision for contractual appointment to Grade "E-9" in GRIDCO's Regulations.

30. Learned Counsel for GRIDCO tried to argue by placing reliance on various judgments that a contractual appointment in the facts and circumstances of the case can be made by GRIDCO even though there is no provision in the Regulation to make such an appointment. First reliance was placed on the judgment of the Supreme Court in the case of Satish Chandra Anand Vs. The Union of India (UOI), . From the facts of that case it appears that Satish Chandra Anand was appointed in October, 1945 by the Government of India on a five year contract in the Directorate General of Resettlement and Employment of the Ministry of Labour. After a short period of practical training, he was posted in January, 1946 at Jabalpur and was later confirmed in his appointment. The aforesaid contract of service was to expire in January, 1950. Before such expiry Government made a new offer to continue him in service on the expiry of the contract on the terms specified in that letter. On those facts, the learned Judges of the Supreme Court held that the Temporary Service Rules applied. Under the said Rules "quasi-permanent service" has been defined and the Petitioner was not coming within the said definition. In that view of the matter, the learned Judges held that a person, who has been engaged on the basis of a contract on temporary basis, can be discharged in accordance with the Rules of the Government.

31. In the instant case, as noted above, there is no provision for appointment to a post in the Grade of E-9 on a contractual basis in the Regulations. In the

instant case the Petitioner was subjected to a regular selection procedure. Apart from that in 1953, the status of a Government employee was not decided. The Supreme Court for the first time decided the same and laid down the law in the case of Roshanlal in 1967. As such, the ratio in the case of Satish Chandra Anand has to be understood in the context of subsequent development of law in Government employment after the decision in Roshanlal's case (supra). In any event, factually the decision in Satish Chandra Anand is distinguishable.

32. Reliance was placed on a celebrated decision of the Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), . In that case, the learned Judges of the Supreme Court held that the termination of service of the Government servant appointed to a post either on probation or on officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, does not deprive the Government servant of any right and therefore, that cannot by itself be a punishment.

33. We are not concerned with the aforesaid question. In Dhingra's case the concept of contractual appointment was not in issue. But when a person is appointed on a temporary basis and under the relevant Government Rules he has not acquired the quasi-permanent status as he has not acquired any right to the post. But in the instant case, the Appellant has acquired a right to the post on being regularly appointed pursuant to public advertisement and through the process of selection. It is nobody's case that the Appellant was appointed on probation or was appointed on an officiating basis. So in this case, the introduction of a element of contract even though same is not in the Regulation, in so far appointment to E-9 Grade is concerned, is wholly unauthorized and cannot be sustained in the eye of law.

34. The next judgment relied by the learned Counsel for the GRIDCO was in the case of The State of U.P. Vs. Ram Chandra Trivedi, . In that case also it appears that the Petitioner was appointed as a temporary clerk in Guru Sarain Canal Division, Jhansi. Then he was asked to appear in a Departmental Examination. In that examination a Clerk of Bhandar Canal Division attempted to impersonate the Petitioner. In that context the Supreme Court made its observations. In the instant case, the Petitioner was not appointed on a temporary basis and therefore, the facts in this case are totally different.

35. The subsequent decision relied upon was rendered in the case Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another, . In that case also the appointment was temporary. It appears from paragraph 11 at page 2414. But here the Petitioner's appointment is not temporary.

36. Reliance was also placed on a decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Brahma Dutt Tripathi, . In that case Brahma Dutt Tripathi on being released as a Short Service Commission from Indian Army with effect from 31.3.1969 applied for Commission in National Cadet Corps and

was appointed under the scheme floated by the Government of India for rehabilitation of Short Service Commission Officers in the Army and he joined the NCC on 11.12.1969. In connection with such appointment under the Scheme the impugned order was passed on 30.11.1979 by the Union of India declining to grant extension of service beyond 10.12.1979.

37. From the aforesaid narration of facts, it is clear that factually the Petitioner's case stands on a totally different footing and therefore, the decision in Brahma Dutt Tripathi has no application to the facts of the present case.

38. Reliance was also placed by the learned Counsel on the decision of the Supreme Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, . From paragraph 68 at page 761 of the judgment, it appears that Srinivasa Reddy was appointed after his retirement from Government service in view of exigency of the situation and in order to complete a project which was funded by the World Bank. The said appointed cannot be equated with the appointment of the Petitioner.

39. The other judgment which was relied by the learned Counsel for the GRIDCO was rendered by the Supreme Court in the case of Vidyavardhaka Sangha and Anr. v. Y.D. Deshpande and Ors. reported in (2006) 12 SCC 482. In that case also the appointment was made for an academic year ending on 31.3.1993 and subject to approval of the Education Department. It goes without saying that the said appointment cannot be compared with the nature of appointment of the Petitioner. Therefore, the judgments which were cited by the learned Counsel for the GRIDCO are on fundamentally different facts and do not throw light on the points which are at issue in this case. Therefore, those decisions have no application to this case.

40. In the instant case, if we accept the alternative argument of the Appellant's counsel in that case also the impugned order cannot be sustained. If we consider the amended Clause (2) of the appointment letter, it would appear that the period of contractual appointment was only confined to the initial period of three years. The Appellant was initially appointed on 30.4.1997 for a period of three years which expired on 29.4.2000. But the impugned order of termination was passed on 19.2.2001. It is obviously long after the initial period of three years. Even if we assume that GRIDCO can appoint the Appellant on a contractual basis a reasonable construction of the amended Clause (2) of the appointment letter must lead one to the conclusion that the GRIDCO can treat the contractual period in the Appellant's service only for three years from the date of appointments which expired on 29.4.2000. GRIDCO not having exercised its so called right under the contract, the said employment has to be renewed until the Appellant attains the age of superannuation as provided in the said Regulations. This is of course subject to proceeding if any is initiated against the Appellant on the ground of misconduct. But it is nobody's case that the Appellant's service was terminated on the ground of misconduct. Therefore, even going by the amended

contractual terms of employment the termination of the Appellant's service on 19.2.2001, after the initial period of three years, cannot be sustained.

41. This Court, therefore, holds -

(a) GRIDCO cannot introduce the element of contract in the Appellant's service conditions since there is no provision in the Regulation in so far as the appointment to E-9 is concerned.

(b) Apart from that such an introduction of contractual condition in a regular appointment under the State is opposed to the principles of Articles 14 and 16 of the Constitution as has been laid down by the Apex Court in the cases discussed above.

(c) Alternatively even if it is assumed that such element of contract can be introduced in the Appellant's service, on proper construction of amended Clause (2) in the Appellant's letter of appointment the order of termination under the contract can only be passed within the initial period of three years. That having not been done, the Appellant's service is to continue till superannuation subject of course of any proceedings which may be initiated against the Appellant for misconduct.

42. For the reasons aforesaid, the impugned order of termination dated 19.2.2001 passed by the GRIDCO is quashed as bad in law. Since this Court is of the opinion that the order of termination of the Appellant's service is quashed, the consequential orders passed by the GRIDCO for evicting him from the quarters are also not sustainable. The Appellant is reinstated in service and in the post from which he was terminated. He must be paid 50% of the back wages for the period he remained out of service.

43. We direct that the Appellant must be reinstated in service with effect from 7.4.2008 and his regular salary be paid from that date. The back wages be paid to the Appellant within a period of three months from the date of his reinstatement.

44. In so far as rent for the quarters of the Appellant is concerned, he must pay the regular rent, but not the penal rent, for the period during which he was occupying the quarters. At the time of paying the back wages. GRIDCO can adjust the unpaid regular rent of the Appellant's quarter against such back wages.

45. That writ appeal is allowed and the order of the learned Judge of the writ Court dated 26.9.2003 passed in OJC No. 2225 of 2001 is set aside and the writ petition is also allowed. There shall be no order as to costs.

B.N. Mahapatra, J.

46. I agree.